

# DECLARATION OF COVENANTS AND RESTRICTIONS

OF

98003930

## CHAPEL HILL SUBDIVISION

Chapel Hill, L.L.C., Declarant, hereinafter called the Developer, the owner of all of the real property described in Annex "A" attached, which has been or will be hereafter developed and known as CHAPEL HILL SUBDIVISION, according to plat thereof prepared by Rester and Coleman Engineers, Inc., which has been or will be hereafter admitted to record in the Probate Court of Mobile County, Alabama, said plat being made a part hereof by reference does hereby covenant and agree with each and shall, by virtue of becoming such an owner, agree with the Developer and with each other owner or future owner of any part of said property, that the following covenants, restrictions and limitations apply to the property in said subdivision.

1. No house, garage, carport, playhouse, outbuilding, fence wall, swimming pool or other above-ground structure shall be commenced, erected or maintained upon any property subject to this Declaration, nor shall any exterior addition to, change in or alteration of any of said structures be made until complete final plans and specifications showing the nature, kind, shape, height, materials, basic exterior finishes and colors, location and floor plan thereof, and showing front, side and rear elevations thereof and the name of the builder, have been submitted to and approved by the Developer, its agents, successors or assigns, as to harmony of exterior design, general quality, conformity with existing standards of the neighborhood and location in relation to surrounding structures and topography.

2.1 If the Developer fails to approve or disapprove plans and specifications within fourteen (14) days after they have been submitted to it, the Developer shall be deemed to have approved the same.

2.2 In the event of disagreement between the Developer and any lot owner as to the propriety of its disapproval of any proposed plans and specifications, such disagreement shall be resolved at the request of either the Developer or the lot owner, by a decision of three arbitrators, each of whom is a registered Architect in the County of Mobile, Alabama, one of whom shall be appointed by the Developer, one by the lot owner, and the third by the concurrence of the two so appointed, and the decision of such board of arbitrators shall be binding upon the Developer and the lot owner.

2.3 The Developer may, at any time and from time to time, delegate or assign any other person, entity or committee, in whole or in part, the right and authority granted by this Section or by any other Section of the restrictive covenants granting a discretionary right or authority to the Developer.

2.4 The Developer declares that upon the completion of Chapel Hill Subdivision, and the sale of all lots in all units, or at such earlier time as it may consider practicable, it will designate the Chapel Hill Homeowner's Association, Inc. as its successor in authority with respect to all rights herein granted or reserved to it.

2.5 All proposed building or constructions plans, specifications, plot plans or related data, drawings or requests for approval shall be submitted to the Developer in care of its

agent, Michael C. Daniels, 5229 Cottage Hill-Road, Mobile, Alabama, unless and until the Developer shall designate a different agent or depository. Construction on any lot shall be completed within a reasonable time from the date of actual commencement of construction. Reasonable time, as used herein, shall mean the usual or normal time required to construct a residence of similar design in similar subdivisions as the in the City of Mobile, Alabama.

2.6 Each lot owner, by acceptance of a deed to a lot in this subdivision, whether or not expressly so provided in said deed, covenants and agrees that in the development and construction of improvements upon said lot, best management practices (BMP) will be followed for the prevention and minimization of non-point sources of pollution and storm water run-off, contained and described in Alabama Nonpoint Source Management Program Document, as amended, prepared by ADEM, Water Division – Mining and Nonpoint Source Section, in accordance with Section 319 of the Federal Clean Water Act, as amended, EPA Stormwater Pollution Prevention For Construction Activities, Office of Wastewater Enforcement and Compliance, U.S. Environmental Protection Agency, Washington, D.C. 20460, as amended, Best Management Practices for Nonpoint Source Runoff Control, Mobile & Baldwin Counties, Alabama, South Alabama Regional Planning Commission, January 1989, as amended, and other applicable publications; and, that all appropriate pollution abatement/prevention facilities and structural and non-structural BMPs as described in these documents or Department approved equivalent BMPs, will be implemented and maintained as needed at the construction site in accordance with good engineering practices and ADEM regulations, under the guidance of a qualified pollution prevention/control professional, and specifically agree to hold the Developer harmless of any fault, fine, cost, liability, or remedial expense occasioned or arising directly or indirectly from his/her failure to do so.

2.7 The lot owner agrees to apply for any appropriate permit from ADEM for the discharge of pollutants to waters of the State of Alabama as required by applicable Federal and State Law and Regulations as amended. The purchaser agrees to apply for and obtain the appropriate permits for the discharge of stormwater pollutants as by State and Federal Regulations.

3.1 No building or structure shall be erected, altered, placed or permitted to remain on any lot other than one detached single-family dwelling not to exceed two and one-half stories in height, an attic or basement under the ground not to be considered a story for this purpose, and a private garage for not more than three automobiles, and other appropriate outbuildings incidental to residential use.

3.2 All lots in the Subdivision shall be known and described as Residential lots, and no residential lot shall be used except for residential purposes.

3.3 Except with prior written approval of the Developer: (a) No part of any lot may be dedicated as a public street, (b) No lot shall be used to give access (either vehicular or pedestrian) to property outside the boundaries of Chapel Hill Subdivision, and (c) No lot shall be combined with property outside the boundaries of Chapel Hill Subdivision.

3.4. On Lots 1, 2, 4, 9, 12, 16, 17, 19, 23, 24, 25, 26, 38, 41, 43, 44, 45, 46, and 52 the Owner, Homeowners Association, and Owner of any adjacent lot is hereby granted an easement over and across each adjacent lot on the side of the owner's lot without a setback for the expressed purpose entering upon the adjacent lot as may be reasonably necessary to make repairs and replacements to eaves, roofs and other portions of the structure which

overhang or lie on the lot line and for the express purpose to inspect and treat for wood destroying organisms and general pests control.

4. No lot or lots shall be re-subdivided without the prior written approval of the Developer. The Developer reserves the unrestricted right to re-subdivide any lot or group of lots in the subdivision.

5. The ground floor area of the main building or structure, exclusive of open porches, open carports and garages, situated upon any lot, shall contain not less than 2,000 square feet in the case of a one-story building or structure, or not less than 1,200 square feet in the case of a building or structure having more than one story, with a total enclosed area of not less than 2,000 square feet. Each residence shall be constructed with a double carport or garage. No front entry garages are allowed on lots 53, 54, 55, 56, 57, 58, 59, 60 and 61.

5.1 (Amended April 29, 1998) On Lots 1 through 52, the ground floor area of the main building or structure, exclusive of open porches, open carports and garages, situated upon any lot, shall contain not less than 2,200 square feet in the case of a one-story building or structure, or not less than 1,200 square feet in the case of a building or structure having more than one story, with a total enclosed area of not less than 2,200 square feet. Each residence shall be constructed with a double carport or garage. The first floor ceiling of each residence shall have a minimum height of 9 feet."

6.1 Setback and Building Restrictions. All structures must be located within the building area for such lot as shown on the plat and in compliance with all notes, detail and building setback lines as shown upon the plat. For the purposes of these covenants, eaves and steps shall not be considered as part of any building. All questions pertaining to restrictions, building requirements and location shall be subject to the interpretation of, and/or variance by, the Architectural Control Committee, and its decision on all such matters shall be final. The Developer will be the Architectural Control Committee until such time as the Developer assigns its duties, rights and obligations to the Chapel Hill Homeowners Association.

6.2 No windows shall be permitted on the side wall of the dwelling facing the zero lot line, unless the wall shall be at least 5 feet from the lot line. If such wall is within 5 feet of the said line, a clerestory may be installed only with prior written approval of the Architectural Control Committee as to location, size and design.

6.3 Mailboxes, signs and house numbering graphics will be a standard design throughout the community. Design and location will be provided by the Architectural Control Committee. The property owner is also responsible for purchasing a mailbox selected by the Architectural Committee.

6.4 Television dishes may be placed only in back yards in such fashion that they will be the least offensive to other property owners. 18" size dish maximum.

6.5 Swimming Pools. No swimming pool shall be constructed, placed, altered or maintained upon any lot without the prior written approval of the Developer and/or the Architectural Control Committee of the type, design and location thereof. Any such swimming pool must also be constructed, equipped and maintained in accordance with the regulations, standards and recommendations of the appropriate city, county and state authorities.

6.6 Animals and Poultry. No animals, livestock or poultry of any kind, shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose. In no event shall more than two household pets be kept on any lot at any one time.

7. Air conditioning and heating units, blowers, towers, condensers, or structures related thereto, when erected between the side of any building or structure and the side lot line of the lot on which said building or structure is located, shall be enclosed in conformity with the general architecture of the primary residential building or structure, or shielded by shrubbery.

8. All garbage disposal containers must be stored and maintained inconspicuously from the street.

9. No outside clothes-line or other outside apparatus for drying clothes shall be permitted unless screened from view by mass planting or shrubbery or a combination of shrubbery and screening walls, in a manner approved by the Developer.

10. No sign of any kind shall be displayed to public view on any lot except one which has been professionally lettered and is not more than four square feet in size, which may advertise the property for sale or rent, or may be erected by a builder or subcontractor during the construction period.

11. No house trailer or mobile home shall be permitted on any lot at any time, except for construction purposes during the construction period. No more than one camper, motor van or similar recreational vehicle, no more than one boat and boat trailer may be stored on a lot at any time, nor shall any such camper, motor van or other recreational vehicle or boat and trailer be permitted to be parked or stored on the front or side lawn of the lot, but shall be stored to the rear of the lot as inconspicuously from the street as practicable. No overnight street parking shall be permitted in the Subdivision.

12.1 No noxious or offensive activity shall be permitted on any lot, nor shall anything be built thereon which could or might become a nuisance or annoyance to the neighborhood.

12.2 No lot shall be permitted to become overgrown, unkempt, or unsightly, nor shall trash or debris be permitted to accumulate or remain thereon. In the event any lot owner fails to so maintain his lot, the Developer may after fifteen (15) days notice cut and clear the same, and be entitled to reimbursement for the funds so expended, together with interest thereon at the rate of twelve percent (12%) per annum. This indebtedness shall constitute a lien upon the lot and be enforceable at law in the same manner as may then be provided by statute for mortgage foreclosures.

13.1 No exposed concrete block shall be utilized in the construction of the exterior of any structure. All exposed windows and window units shall be constructed of wood or such primed and finished metal as may be specifically approved by the Developer. Bright aluminum window frames will not be approved.

13.2 Lots 1 through 52 are required to have architectural and dimensional roof shingles (i.e., timberline 25 year or similar).

14.1 No hedge shall be located nearer the front property line of any lot than the front of the building on such lot, without the written approval of the Developer, and no fence, wall or other structure shall be constructed on any portion of any lot without the prior written approval of the Developer.

14.2 The lot owners of Lots 1 through 52 are required to plant and maintain in the front lawn a minimum of 36 shrubs not less than 16" in height and 12" in width and one (1) tree of the lot owner's choice not less than 6 feet in height.

15. The covenants, terms, conditions, restrictions and limitations herein contained are to run with the land and shall be binding upon all persons and parties claiming under them, and shall inure to the benefit of, and shall be binding upon, their and each of their heirs, executors, administrators and assigns, for a period of twenty (20) years subsequent to the date of these presents, at which time the said covenants, restrictions and limitations shall automatically be extended for successive periods of ten (10) years each, unless changed in whole or part by written instrument signed by a majority of the then owners of the lots, dated within the nineteenth (19<sup>th</sup>) year subsequent to the date of these presents, or in the last year of any subsequent successive ten (10) year period, and recorded in the records of the Probate Court.

16. Each property owner and future property owner acknowledges that City of Mobile, Alabama is subject to approximately sixty (60) inches of rain per year, and hence this Subdivision and each lot and other area therein is subject to heavy rainfall and the flow of surface water as a result of such rainfall. Each owner or future owner of any lot acknowledges that the Developer has complied with the subdivision requirements of City of Mobile, Alabama, including but not limited to, street drainage, retention pond and utility requirements as evidenced by the acceptance of this Subdivision by City of Mobile, Alabama.

17. Each owner or future owner of any lot in Chapel Hill Subdivision by the acceptance of a deed subject to these restrictions, does herewith concur, consent and agree that the Developer's compliance with such subdivision requirements constitutes the exercise of reasonable care.

18. No lot shall be conveyed, devised, or leased or demised at any time hereafter, except subject to the covenants, terms, conditions, restrictions and limitations herein contained, and the obligation to observe and perform the same; and whether or not it be so expressed in the deed and other instrument of conveyance of the property, the same shall be absolutely subject to the covenants, terms, conditions, restrictions and limitations herein contained, which shall run with and be appurtenant to the land and every part thereof, as fully as if expressly contained in proper and obligatory covenants or conditions, in each and every contract concerning, or conveyance of, any lot, any part of the subdivision or any improvements therein situate.

19. Each lot is expressly made subject to the servitude of any easement for the installation and maintenance of underground wires and cables to provide electric service to the improvements of each lot. The installation of the individual electric underground service shall be pursuant to the Alabama Power Company's rules and regulations on file with the Alabama Public Service Commission relating to underground electric service in subdivisions, which are incorporated herein by reference. The agents, servants and employees of the Alabama Power Company shall be afforded reasonable access to such underground installations for the

purpose of maintenance and repair. No lot shall be served with overhead electric service, and no lot owner may erect power poles for such purpose, provided, however, that nothing herein shall be construed to prohibit overhead street lighting or ornamental yard lighting where serviced by underground wires and cables.

20. Each lot owner is notified herewith that (a) there shall be no plants, shrubs, fences, walls, or other obstructions in front of or within three (3) feet of the sides or rear of any pad-mounted equipment that will obstruct the operations or replacement of the equipment and that the Alabama Power Company shall not be liable for any damages or destruction of any shrubs, trees, flowers, grass or other plants caused by the Company's equipment or employees or the equipment or employees of any contractor or subcontractor in the construction, operation, maintenance or removal of the Company's facilities; (b) to obtain the meter location from the Company prior to the beginning of the installation of the service entrance facilities and associated with internal wiring; (c) of their responsibility for installing the Company provided meter socket to Company specifications and providing and installing 2" for 200 amp or 3" for 400 amp schedule 40 PVC or equivalent galvanized conduit from the meter socket to two (2) feet below finished grade.

21. The entrance wall has or will be constructed upon the common area designated for that purpose on the Subdivision plat adjacent to lots 1, 47, 48, 49, 50, 51 and 52, Chapel Hill Subdivision, as recorded in Map Book 77, page 7, of the Probate Court records of Mobile County, Alabama. The Chapel Hill Homeowner's Association, Inc. shall have a right of access to the wall for the purpose of repair and maintenance at all reasonable times. The surface of the interior of the entrance wall may not be painted or otherwise modified in appearance by the Homeowner's Association, without the consent and approval of the owners of lots 1, 47, 48, 49, 50, 51 and 52, Chapel Hill Subdivision.

22. If the parties hereto, or any of them, or any of their heirs, executors, administrators or assigns, or any such future owner or owners of any lot or lots within the existing property or any of their heirs, executors, administrators or assigns, shall violate or attempt to violate any of the covenants, terms, conditions, restrictions and/or limitations herein contained, it shall then be lawful for any person or persons owning any real property situated in said Subdivision to prosecute any proceedings at law or in equity against the person or persons violating from so doing, or to recover damages for such violations or attempted violations. Neither the Developer, or its employees, agents or assigns, or any of its partners or their representatives, heirs, personal representatives, successors and assigns (jointly referred to as Developer) shall be liable to any lot owner or lot owners in this or future units for the (1) manner in which the Developer exercises, or for its failure or refusal to exercise, any right of authority herein granted to the Developer whether discretionary or not; (2) for the failure or refusal of any lot owners to comply with any of the provisions hereof; and (3) the failure or refusal of the Developer to enforce any of the provisions hereof against any lot owner.

23. The Developer herein expressly reserves unto itself the right to amend, modify, change, cancel or annul these covenants, limitations and restrictions in whole or in part, at any time during the pendency or term of the same as they now exist, or as they may be hereafter amended, modified, changed, canceled or annulled in accordance with the foregoing reservation of authority. Such action on the part of the Developer is to be evidenced by an instrument executed by a duly authorized officer or partner of Developer and recorded in the Office of the Judge of Probate, Mobile County, Alabama.

24. It is expressly reserved and stipulated herein that such action as may be taken by Developer in accordance with the foregoing authority and power, may result in any, all or part of any covenant, restriction or limitation, as it exists, or as it may be amended or changed, being either more or less restrictive or burdensome than the foregoing covenants, restrictions or limitations.

25. No action on the part of the Developer taken in accord with the foregoing reserved authority shall place an additional restriction or limitation on a specific lot previously conveyed by the Developer, unless the then owner of the same shall join in the instrument, affecting the same, or shall execute such other instrument as will properly evidence his consent. It is further stipulated and reserved herein that the Developer may at any time waive any, all or part of the covenants, restrictions or limitations as set forth herein.

### HOMEOWNER'S ASSOCIATION

26. A homeowner's association has been formed, which will hold title to the entrance wall and all common easements and areas including all retention ponds and/or storm water detention systems and drainage systems or ditches constructed to serve Chapel Hill Subdivision. The name of the Association is the Chapel Hill Homeowner's Association, Inc., and the Association shall, among other things, maintain, service and repair these facilities in perpetuity, or upon the express assumption of such duties by any governmental entity as may earlier occur.

27. All lot owners in Chapel Hill Subdivision shall automatically become members of the association upon acquiring a subdivision lot. A subdivision developed in the future shall be deemed a unit of Chapel Hill Subdivision if its name designates it to be such, and /or it is developed pursuant to a common plan, by or with the approval of the Developer.

28. The Association shall be responsible for maintaining all streets in the subdivision and all utilities serving the subdivision to the extent that the same are not maintained by the county or a unit of local government in which the subdivision is located or, in the case of utilities, by the public utility company or cooperative furnishing such utilities, including, without limitations, all utility trench maintenance, including settling and washouts, and, after installation by the Developer, the street lights and support structures.

29. The owners of lots in each unit of Chapel Hill Subdivision shall be entitled to the benefits of the common areas and facilities in all units. Each owner of any lot by acceptance of a deed to such lot, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association the following:

- a) Annual general assessments or charges as herein described; and
- b) Special assessments for capital improvements, repairs, or other expenses which exceed the budget amount of the annual assessment as described.

30. And all such assessments, together with interest thereon and the costs of collection thereof, including a reasonable attorney fee as hereinafter provided, shall be a charge and lien on each lot and shall be continuing lien on the lot against which each such assessment is made. Each such assessment, together with interest thereon and the costs of

collection thereof, including a reasonable attorney fee, shall, as hereinafter provided, be the personal obligation of the owner of such property at the time that such assessment became due.

31. The general assessment levied by the Association annually will be used exclusively for the maintenance and operations of the retention pond and/or storm water detention system, drainage system and ditches, street lights, maintenance of entry signs, brick wall, landscape of entry signs, landscaping within the center islands of streets and cul-de-sacs, and such other maintenance responsibilities as are herein imposed, together with all related expense.

32. Each lot in the Subdivision, whether improved or unimproved, shall be assessed at a uniform rate. The foregoing notwithstanding, Developer shall not be responsible for dues on any lot held for resale. The purchaser of any such lot shall be responsible for payment of dues occurring thereafter to commence upon the date of such sale.

33. The Directors of the Association estimates that anticipated expenses for the current year will require an annual lot assessment of \$120.00 per lot.

34. By a vote of two-thirds (2/3rds) of the Directors, the Board of Directors of the Association shall fix the annual lot assessment, for the forthcoming calendar year on or before the fifteenth of September. The annual assessment must be in an amount sufficient to enable the Association to meet its obligations and to maintain the common areas and facilities as provided above. The annual assessment, for the forthcoming calendar year shall become due and payable on and shall constitute a lien as of, the first day of October of each year. The assessment shall be in default if not paid by the thirty-first day of December. The Board, may in its sole discretion extend the time of payment of any assessment, provide for the collection of the same in quarterly or monthly installments, or forgive or forego the collection of the same for good cause.

35. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstructions, maintenance, repair or replacement of the said retention pond and/or storm water detention system, or as may otherwise be required where expenditures exceed the budgeted amount.

36. The lien for unpaid assessments shall be effective from and after the date of recordation in the Records of the Judge of Probate of Mobile County, Alabama, of a notice of lien stating the lot number, the name of the record owner, the amount due, and the date when due. Such notice of lien shall include only sums which are due and payable when the claim of lien is recorded and shall be signed and verified by a Director or duly authorized agent of the Association.

37. Upon full payment of all sums secured by the lien, the party making payment shall be entitled to a satisfaction of lien in recordable form. All such liens shall be subordinate to any lien for taxes, and any mortgage or other lien recorded prior to the time of recording of the notice of the Association's lien.



38. An unpaid assessment shall constitute a personal liability of a lot owner or owners. The lien for an unpaid assessment shall not survive a sale or defeasance of the property, i.e. shall not be effective as either a liability or lien against a purchaser or mortgagee, unless and except a notice of lien has been filed in the records of the Judge of Probate, Mobile County, Alabama, prior to defeasance or sale.

39. If a holder of a first lien of record, or other purchaser of a lot, obtains title to such lot as result of foreclosure of the first lien, such acquirer of title, his successors and assigns, shall not be fully liable for the share of assessments by the Association pertaining to each lot or chargeable to the former lot owner which became due prior to acquisition of title as a result of the foreclosure. Such unpaid share of assessments shall be deemed to be expenses collectable from all of the remaining lot owners, including such acquirer, his successors or assigns.

40. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at twelve percent (12%) per annum, or such different percentage rate as may be established by resolution of the Board of Directors, with notice of such change to be given to each lot owner in a manner to be designated by said Board, provided, however, that such interest rate may not exceed the maximum annual interest rate allowed by the laws of the State of Alabama at the time that such assessment becomes due, and shall be uniformly applied to all lot owners. The Association may bring an action at law against the owner or owners for the enforcement of the lien against the property by the terms of this document, in accordance with the statutory provisions of the laws of the State of Alabama then in effect for the foreclosure of mortgages. A money judgment for unpaid assessments may be taken without waiving the lien securing the same.

41. These restrictive covenants and any and all the limitations or requirements herein set forth may be annulled, canceled or modified at any time or times, or from time to time, by an instrument signed and recorded in Probate Court of Mobile County, Alabama by the Developer; provided, however, that no amendment shall place additional restriction or limitation on any specific lot unless the owner of such lot joins in said amending instrument. The Developer may waive any one or more of the covenants, restrictions, limitations, or requirements herein specified.

42. Notwithstanding the power conferred on the developer and/or the lot owners to amend, cancel or annul these covenants, no such action taken by the lot owners or developer shall result in the removal of the obligations imposed by paragraph 26, which obligations shall survive and be imposed on the Association and/or the lot owners.

43. Invalidity of any one of these covenants, terms, conditions, restrictions and/or limitations, or any part thereof, by judgment or court order, shall in nowise affect any of the other provisions, which shall remain in full force and effect.