


STATE OF ALABAMA )  
COUNTY OF MADISON )

  
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Fee Amt: \$143.25 Page 1 of 48  
Madison County, AL  
FRANK BARGER Probate Judge

**Amendment to and Adoption of** File **2020-00013526**  
**Declaration of Covenants, Conditions, & Restrictions**  
**For Berry Hill Estates**

WHEREAS, the Declaration of Covenants, Conditions, & Restrictions for Berry Hill Estates, Phase I (the "Declaration") was previously established by Flint River Falls, LLC on July 21, 1997 and recorded in the Office of the Judge of Probate of Madison County, Alabama in Book 0901, Page 0268 on July 22, 1997; and

WHEREAS, the Declaration was amended by Flint River Falls, LLC on June 1, 1998 and recorded in the Office of the Judge of Probate of Madison County, Alabama in Book 0935, Page 0427 on December 16, 1998; and

WHEREAS, Jeffrey M. Benton became the successor, assign, and new Declarant to Berry Hill Estates on May 23, 2001, and recorded said transaction in the Office of the Judge of Probate of Madison County, Alabama in Book 0995, Page 0504 on May 01, 2001; and

WHEREAS, the Declaration, as amended, was further amended by the Declarant, Jeffrey M. Benton, on May 24, 2001 and recorded in the Office of the Judge of Probate of Madison County, Alabama in Book 0995, Page 0563, on May 24, 2001; and

WHEREAS, the Declaration, as amended, was adopted for Phase II of Berry Hill Estates and further amended by the Declarant, Jeffrey M. Benton, on August 2, 2002 and recorded in the Office of the Judge of Probate of Madison County, Alabama in Book 1026, Page 0650, on August 5, 2002; and

WHEREAS, the Declaration, as amended, was adopted for Phase III of Berry Hill Estates by the Declarant, Jeffrey M. Benton, on April 29, 2005 and recorded in the Office of the Judge of Probate of Madison County, Alabama as instrument number 20050502000279430 on May 02, 2005; and

WHEREAS, the Declaration, as amended, was adopted for Tract 1 of Phase IV of Berry Hill Estates by the Declarant, Jeffrey M. Benton, on December 19, 2007 and recorded in the Office of the Judge of Probate of Madison County, Alabama as instrument number 20071219000883570 on December 19, 2007; and

WHEREAS, the Declaration, as amended, was further amended by the Declarant, Jeffrey M. Benton, and the Berry Hills Estates Homeowners Association, Inc. on May 7, 2008 and recorded in the Office of the Judge of Probate of Madison County, Alabama as instrument number 20080527000341850 on May 27, 2008; and

THIS INSTRUMENT PREPARED BY  
Geoffrey K Middleton  
HUNTSVILLE, ALABAMA

WHEREAS, the Declaration, as amended, was adopted for Tracts 2, 5, and 6 of Phase IV of Berry Hill Estates and further amended by the Declarant, Jeffrey M. Benton, on May 21, 2008 and recorded in the Office of the Judge of Probate of Madison County, Alabama as instrument number 20080523000335280 on May 23, 2008; and

WHEREAS, the Declaration, as amended, was further amended by the Declarant, Jeffrey M. Benton, on August 25, 2010 for the purposes of adopting and incorporating By-Laws of the Berry Hill Estates Homeowners Association, Inc. (originally signed May 17, 1999) into the Declaration, and said amendment was recorded in the Office of the Judge of Probate of Madison County, Alabama as instrument number 20100826000483800 on August 28, 2010; and

WHEREAS, the Declaration, in Section 2 of Article 12, provides that “this Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of at least two-thirds (2/3) 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”; and

WHEREAS, it is the desire of at least two-thirds (2/3) the Board to amend the subject Declaration in order to consolidate previous amendments, update language/phrasing/formatting, and make new amendments to the Declaration as well as afford all interested parties notice of the same with the intent that all lots/phases currently subject to the Declaration shall remain subject to the Declaration; and

WHEREAS, the Declarant’s unilateral right, as per Article X of the Declaration, to subject additional property to the Declaration is limited by ten (10) years and said time frame has passed.

NOW, THEREFORE, the Declaration, not to include the By-Laws as adopted in instrument number 20100826000483800, is hereby amended in its entirety as shown by the attached “Exhibit A”.

[THIS SECTION INTENTIONALLY LEFT BLANK – SIGNATURES ON NEXT PAGE]

ADOPTED this the 13<sup>th</sup> day of February, 2020.

**BERRY HILL ESTATES  
HOMEOWNERS ASSOCIATION, INC.  
An Alabama Non-Profit Corporation**

**Ron Wright, Board Member**

**Karen Lund, Board Member**

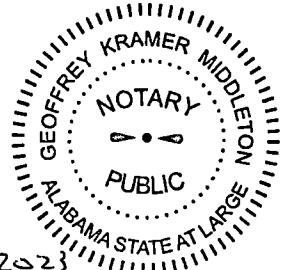
**Christina Key, Board Member**

State of Alabama )  
County of Madison )

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that **Ron Wright** whose name as **Board Member** of the **BERRY HILL ESTATES HOMEOWNERS ASSOCIATION, INC.**, a non-profit corporation, 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 this 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 this the 13<sup>th</sup> day of February, 2020.

Notary Public  
My Commission Expires: 02 - 22 - 2023

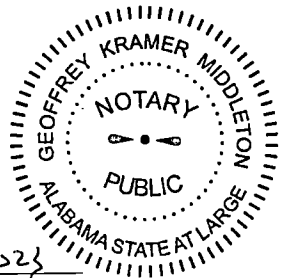


State of Alabama )  
County of Madison )

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that **Karen Lund** whose name as **Board Member** of the **BERRY HILL ESTATES HOMEOWNERS ASSOCIATION, INC.**, a non-profit corporation, 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 this 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 this the 15<sup>th</sup> day of February, 2020.

Notary Public  
My Commission Expires: 02 - 22 - 2023

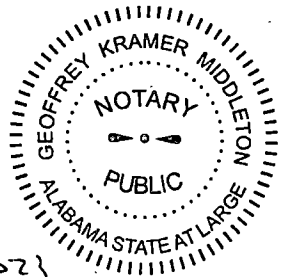


State of Alabama )  
County of Madison )

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that **Christina Key** whose name as **Board Member** of the **BERRY HILL ESTATES HOMEOWNERS ASSOCIATION, INC.**, a non-profit corporation, 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 this 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 this the 18<sup>th</sup> day of February, 2020.

Notary Public  
My Commission Expires: 02 - 22 - 2023



**EXHIBIT A**

DECLARATION OF COVENANTS, CONDITIONS, & RESTRICTIONS

FOR

BERRY HILL ESTATES

AS RECORDED IN PLAT BOOK 35, PAGE 26

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**DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
BERRY HILL ESTATES**

**THIS DECLARATION made on the date hereinafter set forth by Flint River Falls Limited Liability Company referred to as "Declarant".**

**W I T N E S S E T H :**

**WHEREAS, Declarant is the owner of the following described property situated in Madison County, Alabama, more particularly describes, to wit;**

**See Exhibit "A" attached hereto and incorporated herein by reference as though the same were fully set out herein verbatim**

**AND, WHEREAS, Declarant presently contemplates the development of the above property as single family residences with common areas;**

**AND, WHEREAS, Declarant has placed on record a map or plat of the Development located upon real property in Madison County, Alabama and more particularly described as follows:**

**All of Berry Hill Estates, a map or plat of which is of record in the Office of the Probate of Madison County, Alabama in Map Book 35 Page 26 .**

**NOW, THEREFORE, Declarant hereby declares that all of the Properties described above shall be held, sold and conditions which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.**

**ARTICLE I**  
**DEFINITIONS**

**Section 1.** "Association" shall mean and refer to Berry Hill Estates Homeowners Association, Inc., its successors and assigns.

**Section 2.** "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

**Section 3.** "Properties shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

**Section 4.** "Common Areas" shall mean all real property owned by the Association for the common use and enjoyment of the Owners. The Common Areas to be owned by the Association at the time of the conveyance of the first lot shall be the property set out in Exhibit "A" attached hereto and incorporated herein by reference as though the same were fully set out herein verbatim, less and except the lots to be sold to the individual owners.

**Section 5.** "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with exception of the Common Areas.

**Section 6.** "Member" shall mean and refer to every owner who holds membership in the Association.

**Section 7.** "Articles of Incorporation" shall mean the Articles of Incorporation of Berry Hill Estates Homeowners Association, Inc., as such document may be amended.

**Section 8.** "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 Declarations, the By-Laws and the Articles of Incorporation.

**Section 9.** "Board of Directors" or "Board" shall mean the governing body of the Association, and the Board shall be composed of three (3) members and shall have such duties as are provided in the Declaration, the By-Laws, the Articles of Incorporation, and the Alabama Nonprofit Corporation Act.

**Section 10.** "By-Laws" shall refer to the By-Laws of Berry Hill Estates Homeowners Association, Inc., as such document may be amended from time to time.

**Section 11.** "Certificate of Occupancy" shall mean any required certification issued by the appropriate governmental authorities as a prerequisite to occupancy of any Residence.

**Section 12.** "Community" shall mean and refer to that certain real property and interests therein described in Exhibit "B", attached hereto, and (i) such additions thereof of all or any portion of the real property described in Exhibit "C", attached hereto, as may be made by Declarant (or its Mortgage or transferee, as provided in the Declaration) by Supplementary Declaration; and (ii) such additions thereto of other real property as may be made by the Association by Supplementary Declaration.

**Section 13.** "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 Declaration.

**Section 14.** "Declarant" shall mean and refer to Flint River Falls Limited Liability Company 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, or in Exhibit "C", 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 "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, and in Exhibit "C", 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.

**Section 15.** "Declaration" shall mean the Declaration of Protective Covenants for Berry Hill Estates, as such document may be amended.

**Section 16.** "General Assessments" shall mean assessments levied for Association Expenses determined by the Board to the benefit of all Owners and Occupants.

**Section 17.** "River, Creek Lot Owners" shall mean the owner of any residence whose rear property abuts a river or creek within the community or whose rear property line would abut such river or creek if the strip of land is between such property line and such was owned by the owner of such residence.

**Section 18.** "Majority" means those eligible votes, Owners, or other group as the content may indicate totaling more than fifty (50%) percent of the total eligible number.

**Section 19.** Reserved.

**Section 20.** "Mortgage" means any 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.

**Section 21.** "Mortgagee" shall mean the holder of a Mortgage.

**Section 22.** "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.

**Section 23.** "Person" means any natural person, as well as a corporation, joint venture, partnership (general or limited), association, trust, or other legal entity.

**Section 24.** "ACC" shall refer to the Architectural Control Committee.

**Section 25.** "Supplementary Declaration" shall mean an amendment to the Declaration subjecting additional property to the Declaration.



## ARTICLE II

### PROPERTY RIGHTS

**Section 1. Owners Easement of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with title to every Lot, subject to the following provisions:**

- a) The right of the Association to suspend the voting rights and right to use any facilities, if any, owned by the Association by an Owner for the period during which any assessment against his Lot remains unpaid.
- b) The right of the Association to suspend the right to use any facilities, if any, owned by the Association by an Owner for the period during which any infraction of its published rules and regulations remains un-remedied.
- c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be effective unless an instrument signed by two-thirds (2/3) of each class of members agreeing to such dedication or transfer has been recorded.
- d) The right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Areas and facilities and in aid thereof to mortgage said Properties and the rights of such mortgages in such Properties shall be subordinate to the rights of the Home Owners hereunder.

**Section 2. Delegation of Use Any owner may delegate, in accordance with the By-Laws, his rights of enjoyment to the Common Areas and facilities, if any, to the members of his family, his tenants, or contact purchasers who reside on the property.**

## **ARTICLE III**

### **MEMBERSHIP AND VOTING RIGHTS**

**Section 1.** Every Owner of a Lot shall be a Member of the Association, Membership shall be appurtenant to and may not be separate from ownership of any Lot.

**Section 2.** The Association shall have two classes of voting membership:

**Class A.** Class A Member(s) shall be all Owners with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

**Class B.** As of calendar year 2018, this class of membership ceased to exist as defined below. The Class B Member(s) shall be the Declarant and shall be entitled to fifteen (15) votes for each Lot owned in Phase I, Phase II, and Phase III of Berry Hill Estates. The Class B membership shall cease and be converted to Class A membership at such time as the total votes outstanding in the Class A membership equals or exceeds the total votes outstanding in the Class B membership.

## ARTICLE IV

### Covenant For Maintenance Assessments

**Section 1. Creation of the Lien and Personal Obligation of Assessments.** The Declarant, for each Lot owned within the Properties, hereby conveys, and each Owner of any Lot by acceptance of a deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments for charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge of the land and shall be a continuing lien upon the Property against which each assessment is made. Each such assessment, together with interest, cost, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due, and the personal obligation for delinquent assessments shall pass to his successors in title. No Lot Owner may waive or otherwise escape liability for the assessments provided for in this declaration by non-use of the Common Area or abandonment of his Lot.

**Section 2. Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area.

**Section 3. Special Assessments.**

- (a) Special assessment for capital improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement for a capital improvement upon the Common Areas, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members voting in person or proxy at a meeting duly called for this purpose.

**(b) Special assessment for unrecovered expenses.** Pursuant to provisions of Article VI section 2 and Article VII section 29, the association may levy a special assessment for unrecovered expenses accrued in the pursuit of individual assessments of enforcement. The Board shall continually keep record of all such expenses that may be at risk, all or in part, for full recovery and shall make such records available to the membership at each annual meeting. Where the risk of unrecovered expenses may require a special assessment or impede the Association's normal yearly operating obligations, such expenses shall have the prior assent of two-thirds (2/3) of the votes of each class of Members voting in person or proxy at a meeting duly called for this purpose.

**Section 4. Notice and Quorum for Any Actions Authorized Under Sections 2 and 3.** Written notice (unless waived in writing by all members) of any meeting called for the purpose of taking any action authorized under Section 2 or 3 shall be sent to all Members not less than ten (10) days in advance of the meeting. At first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting (unless waived in writing by all Members) shall be held more than twenty (20) days following the preceding meeting.

**Section 5. Rate of Assessment.** Both annual and special assessments must be fixed at a uniform rate for all Lots.

**Section 6. Date of Commencement of Annual Assessments: Due Dates.** The Board of Directors of the Berry Hill Estates Homeowners Association, Inc. shall from time to time, and at least annually, prepare a budget for repair and maintenance of the Common Areas, and determine the amount of money required to meet the expenses for the upcoming year. The budget expenses shall include, but shall not be limited to, the cost of all insurance premiums required to be maintained by the Homeowners Association, an amount for working capital for the Homeowners Association, an amount for a general operating reserve, an amount for a reserve fund for replacements, and an amount to make up for any deficit in the budgeted expenses for any prior year. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due date for payment of each assessment shall be established by the Board of Directors of the Homeowners Association, and, unless otherwise provided,

the Association shall collect from the Owner of each Lot annually. The Association shall, upon demand, furnish a certificate signed by an officer of the Association setting forth whether the assessment on a specified Lot has been paid. Such Certificate Shall be evidence of payment of any assessment therein stated to have been paid.

**Section 7. Effect of Non-payment of Assessment: Remedies of the Association.** Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear late fee(s) or interest from the date of delinquency at the rate of twelve (12%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Property, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. Each Such Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Berry Hill Homeowners Association, or his agents, the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage or deed of trust lien to the Association a power of sale in connection with said lien. The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all Lot Owners. The Association, acting on behalf of the Lot Owners shall have power to bid in an interest foreclosed at foreclosure sale and to acquire and hold, lease, mortgage and convey the same. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

**Section 8. Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer to any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from lien thereon.

**Section 9. Exempt Property.** The Common Areas shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

**Section 10. Insurance Assessments and Casualty Cost.** Each Lot Owner shall be required to have and maintain insurance, and furnish a copy of the policy to the Homeowner's Association, covering full replacement cost for all Homes and any fixtures, alterations, installations or additions within any portion of the premises on or used exclusively by an individual Lot Owner (not areas owned in common) made and/or acquired at Owner's individual expense against loss or damage by fire, wind storm, or other hazards, in an amount to cover full replacement cost, that is, the full cost of any repairs and/or reconstruction in the event of damage or destruction from any such hazard All such policies shall be written by a company licensed to do business in the State of Alabama holding a rating of "B", or better, by best insurance reports. All policies shall be for the benefit of the Home Owner and the mortgagees, as their interest may appear.

**Section 11. Insurance-Common Areas.** Association shall obtain insurance for all buildings and any type of improvements on Common Areas and broad-form public liability policy providing coverage to the Association and its membership in an amount of not less than one million (\$1,000,000.00), covering all claims for bodily injury and the amount of not less than five hundred ( \$500,000.00) for claims of property damage. Such insurance shall cover the Association or any of its agents or servants. Said insurance shall also include coverage against vandalism. Premiums for all such insurance shall be a common expense and paid for directly by the Board of Directors and shall be written in the name of the Association. Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto. In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, Occupants, or their Mortgagees, and the insurance carried by the Association shall be primary. All insurance policies shall be reviewed annually by one or more qualified persons.

The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

- (i) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners, the Declarant, and their respective tenants, servants, agents, and guests;

**(ii) a waiver by the insurer of its rights to repair and reconstruct instead of paying cash;**

**(iii) that no policy may be canceled, invalidated or suspended on account of any one or more individual Owners;**

**(iv) that no policy may be canceled, invalidated, or suspended on account of any defect or the conduct of any director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect or to cease the conduct and the allowance of a reasonable time thereafter within which a cure may be effected by the Association, its manager, any Owner or Mortgagee.**

**(v) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration: and**

**(vi) that no policy may be canceled or substantially modified without at least thirty (30) days' prior written notice to the Association.**

**Section 12. Damage or Destruction Repair of Property Insured by Association. Immediately after the damage or destruction by fire or other casualty to all or any portion of any improvement covered by insurance written in the name of the Association, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty.**

**Any damage or destruction shall be repaired or reconstructed unless, within sixty (60) days after the casualty, at least sixty-six (66%) of the total Association vote entitled to vote thereon, the Owner(s) of the damaged property, if any, and , so long as the Declarant has an option unilaterally to subject additional property to this Declaration, the Declarant, otherwise agree. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of**

the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however such extension shall not exceed one hundred and twenty (120) days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed.

If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the Association's Members, levy a special assessment against all Owners. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs or repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited to the benefit of the Association.

In the event that it should be determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the property shall be restored to its natural state and maintained as an undeveloped portion of the Community in a neat and attractive condition.

**Section 13. Property Insured By Owners: Damage and Destruction:** By virtue of taking title to property within the community, each owner covenants and agrees with all other owners and with the Association that in the event the Association does not carry insurance on the owner's property, each shall carry liability and casualty insurance. Each individual owner further covenants and agrees that in the event of a partial loss of damage and destruction resulting in less than total destruction, the individual owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction. In the event that the structure is totally destroyed and the individual owner determines not to rebuild or to reconstruct, the individual owner shall clear the residence of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction. Said lot shall be maintained in accordance with all provisions of these Declaration of Covenants.

**Section 14 Insurance Deductible:** The deductible for any casualty insurance policy carried by the Association shall, in the event of damage or destruction, be allocated among the Persons who are responsible



hereunder, or under any declaration or contract requiring the Association to obtain such insurance, for maintenance of the damaged or destroyed property.

## **ARTICLE V.**

### **MAINTENANCE- CONVEYANCE OF COMMON PROPERTY TO ASSOCIATION**

**Section 1. Association's Responsibility.** The Association shall maintain and keep in good repair the Common Areas. 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 Areas. The Association shall maintain the entry system and entry features at the main entrance of the Subdivision and shall maintain and pay the expenses for water or electricity, or other utilities, if any, provided to all such entry features. Any central irrigation systems for Common Areas shall be maintained by the Association.

In the event that the Association determines 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, or invitees, and is not covered or paid for by insurance, in whole or in part, then the Association may perform such maintenance, repair or replacement at Owner's sole expense, and all costs thereof shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Lot.

## **ARTICLE VI**

### **Architectural Control Committee and Architectural Guidelines**

#### **Section 1. Architectural Control Committee and Guidelines**

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 approved in accordance with this section, or as is otherwise expressly permitted herein. No exterior construction, alteration, addition, or erection shall be made unless and until plans and specifications showing at least the nature, kind, shape, height, materials, colors, and location shall have been submitted in writing to and approved by an Architectural Control Committee (ACC) established by the Board. Submitted plans for new construction shall include full site plans for the dwelling, landscape, and exterior lighting. The Board may, but is not required to, divide the ACC into two subcommittees, with one subcommittee having jurisdiction over modifications and one subcommittee having jurisdiction over new construction. The Board may employ duly licensed architects, engineers, or other qualified persons necessary to enable the ACC to perform its duties. The ACC may, from time to time, delegate any of its rights or responsibilities hereunder to one or more such qualified persons, which shall have full authority to act on behalf of the ACC for all matters delegated. The ACC shall promulgate written guidelines and procedures to the community for the exercise of its duties.

In the event that the ACC fails to approve or to disapprove in writing, 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. Plans and specifications shall be considered submitted upon the date received, and shall be transmitted via the US postal system or as otherwise directed by the ACC. Proof of receipt shall be mail service tracking confirmation or ACC email reply acknowledging receipt of a satisfactory submittal. 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 ACC, 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 ACC 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. Owners may appeal to the Board in writing for a review of ACC decisions, and the results and

determinations of Board review shall be final and binding on all parties. 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 non-compliance with this section, the Board may 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 ACC, the members thereof, nor the Association assumes liability or responsibility therefor, nor for any defect in any structure constructed from such plans and specifications. Neither Declarant, the Association, the ACC, the Board, not 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 judgement, 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 ACC, the Board, 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 judgement, negligence, or nonfeasance and hereby waives the provisions of any law that 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 2. Enforcement and Remedies.** In the event the provisions of this Article VI are breached or are not otherwise being complied with in all respects by any Owner or Occupant or the respective family members, guests, invitees, agents, employees or contractors of any Owner or Occupant, then the Association shall each have the right, at their option, to (a) enjoin any further construction on any Lot or Dwelling and require the removal or correction of any work in place which does not comply with the plans and specifications approved by the ACC for such Improvements and/or (b) through their designated agents, employees, representatives and independent contractors, enter upon such Lot or Dwelling and take all action necessary to extinguish such violation or breach. All costs and expenses incurred by the Association in enforcing any of the provisions of this Article VI, including without limitation, attorney's fees,

**court costs, costs and expenses of witnesses, engineers, architects, designers, land planners and any other persons involved in the correction of nonconforming work, the completion of uncompleted work or in any judicial proceeding, together with any other costs or expenses incurred by the Association in causing any Owner or such Owner's contractors, agents or invitees to comply with the terms and provisions of this Article VI shall be paid by such Owner, shall constitute an individual Assessment to such Owner and, if the same is not paid when due, shall be subject to the lien and be subject to foreclosure as provided for herein, notwithstanding anything provided herein to the contrary, the rights and remedies of the Association set forth herein shall not be deemed exclusive of any other rights and remedies which the Association may exercise.**

## **ARTICLE VII**

### **USE AND ARCHITECTURAL RESTRICTIONS**

**Section 1. Use Restrictions** Except as otherwise provided to the contrary in this Declaration, each Lot and Dwelling shall be used for single-family residential purposes only and no trade or business of any kind may be carried on in or from any Lot or Dwelling. The use of any portion of a Dwelling as an office by an Owner shall not be considered a violation of this covenant if such use does not create regular customer, client or employee traffic. All provisions of the declaration, by-laws, and any rules and regulations, use restrictions or design guidelines promulgated pursuant thereto that govern the conduct of owners and which provide for sanction against owners shall also apply to all occupants even though occupants are not specifically mentioned. Fines may be levied against owners, occupants or tenants. If a fine is first levied and is not paid timely, the fine may then be levied against the owner. The leasing or rental of a Dwelling for residential purposes only shall not be considered a violation of this covenant so long as the lease, (a) is for not less than the entire Dwelling, (b) is for a term of at least six (6) months, (c) is otherwise in compliance with the Rules and Regulations promulgated and published from time to time by the Association, d) Requires without limitation that the tenant acknowledge receipt of a copy of the Declarations, By-Laws, Covenants, use-restrictions and rules and regulations of the association, e) Requires the obligation of the tenant to comply with the foregoing. All valid occupants/tenants shall be treated as acting on behalf of the owner, and any covenants broken by an occupant/tenant shall be considered broken by an owner. As such, any violations/remedies resulting from occupants/tenants shall be passed directly to the owner and the owner's property.

**Section 2. Under Ground Utilities.** All residential utility lines, pipes, conduits and wiring for electrical, gas, telephone, water, sewer, cable television, security and any other utility service for any portion of the Property shall be installed and maintained below ground, subject, however, to existing easements and rights of way.

**Section 3. Building Setbacks.** Subject to the provisions of this Section, minimum building setback lines for all Dwellings shall be established either (a) by the ACC, (b) on the recorded Plat of the Development of which such Lot is included, or (c) in the deed from Developer to the Owner of such Lot. No Dwellings shall be built within the setback areas established in accordance with any of the procedures specified in this Section. All eaves, steps, stoops, porches, terraces, decks and patios shall be deemed a part of the Dwelling for the purposes of determining building setback areas.

**Section 4. Minimum Living Space.** Minimum Living Space requirements shall be not less than 2000 square feet on all interior lots. River and Creek lots shall be not less than 2200 square feet for a single story and 2400 square feet for a multi-story home.

**Section 5. Roofing**

- (a) The ACC shall have the right to approve the pitch and color of any roof and the type of roofing materials which may be utilized for any Dwelling. Minimum pitch to be 6/12 pitch and shingles shall be of a quality grade equal to or higher than originally installed. Colors of roof materials must be within the family of colors selected and approved by the ACC.
- (b) No solar or other energy collection panel, equipment or device shall be installed or maintained on any Lot or Dwelling if the same would be visible from the street.
- (c) No plumbing or heating vents, stacks and other projections of any nature shall be placed on the roof on the front of a Dwelling. All such vents, stacks and any other projections from the roof of any Dwelling shall be located on the rear roof of such Dwelling and shall be painted the same color as the roofing material used for such Dwelling and to the extent practicable, shall not be visible from the street.
- (d) No projections of any type shall be placed or permitted to remain above the roof of any dwelling except for approved chimneys and ventstacks.

**Section 6. Exterior Lighting.** All exterior lighting for any Dwelling, including, without limitation, free standing lighting and utility (e.g. flood) lights attached to a Dwelling, must be approved by the ACC.

**Section 7. Exterior Materials and Finishes.**

- (a) Approved exterior building material finishes for any Dwelling shall include brick, stone, stucco, synthetic plaster (e.g. dryvit), solid wood siding (e.g., cypress or other solid wood ), Hardiplank, Vinyl Siding and such other materials as may be approved by the ACC. Prohibited exterior finish materials

shall include particle board, plywood, or any other type of pressed siding, simulated brick or stone and any other materials as the ACC may from time to time determine.

(b) All brick, stonework and mortar, as to type, size, color and application must be approved by the ACC. All exterior colors, including without limitations, the color of all roof shingles, brick, stone, stucco, synthetic plaster, wood, trim, cornices, eaves, railings, doors and shutters shall be subject to ACC approval.

**Section 8.** Deleted by prior amendment.

**Section 9. Garages.**

(a) Each Dwelling shall provide for parking at least two (2) automobiles in garages or carports for Dwellings. All garages shall be side or rear entry garages or front entry detached garages.

(b) Garage doors or carport openings shall be constructed of such materials as are approved by the ACC. No garage shall be converted to any use other than for the parking of vehicles therein without the approval of the ACC.

**Section 10. Fences.** No chain link or similar type fences shall be permitted within the Development. No fences shall be allowed in front yards. The type of materials utilized for (including color thereof) and the location of all fences shall be subject to approval by the ACC. No fence will be higher than six feet from the final ground level to the top of the fence except by special permission of the ACC. The exterior side of the fence has to be finished, specifically the structural characteristics must be covered. All wood will be painted or stained/treated and maintained in a satisfactory manner. Fences will not be permitted any nearer to front line than the rear most corner of the dwelling except in certain circumstances.

**Section 11. Windows. Window Treatments.** Reflective glass shall not be permitted on the exterior of any Dwelling. No foil or other reflective materials shall be installed on any windows or used for sunscreens, blinds, shades or other purposes. Appropriate window treatments shall be used on all windows. Sheets, bed linens, blankets or paper or plastic bags are not appropriate window treatments. The portion of all window coverings visible from the exterior of any Residence shall be off-white or neutral, except as approved by the ACC.

**Section 12. Mailboxes.** All mailboxes shall be constructed of cast metal and finished with a black colored exterior, except as approved by the ACC.

**Section 13. Utility Meters and HVAC Equipment.** Locations, screens and coverings of all Utility and HVAC Equipment shall be approved by the ACC. No window mounted heating or air conditioning units or window fans shall be visible from the street except as may be permitted by the ACC.

**Section 14. Satellite Dishes.** No satellite dishes over 36 inches shall be allowed on any Lot or Dwelling. Installation must be in the back, or side as close to the back, as possible.

**Section 15 Driveways.** All driveways for each Lot or Dwelling shall be constructed of concrete, except as may be permitted by the ACC.

**Section 16. Pets and Animals.** 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. In the sole discretion of the Board, pets that are permitted to roam free and endanger health, make objectionable noise, or constitute a nuisance to the owners of any property may be removed by the Board after reasonable notice to the pet owner. No pets shall be kept, bred or maintained for any commercial purpose. Dogs shall at all times be on a leash or otherwise confined within the owners property. Without prejudice to the Board's right to remove any pet, no 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 animals and/or pets. Pets shall be registered, licensed and inoculated as required by law.

Pets shall not be permitted to leave excrement on the Lot or Dwelling of any other Owner or within any street or any portion of the Common Areas and the Owner shall immediately remove the same. Each owner shall be liable to the Association for the costs of repairing any damage to the Common Areas caused by a pet of such Owner or Occupant. The Board shall have the right to assess fines for violations of such Rules and Regulations.



**Section 17. Trash, Rubbish and Nuisances.** No trash, garbage, rubbish or debris of any kind shall be dumped, placed or permitted to accumulate on any portion of the Development, nor shall any nuisance or odors be permitted to exist or operate upon or arise from any Lot or Dwelling which would render any portion thereof unsanitary, unsightly, offensive or detrimental to person using, occupying or owning any other Lots or Dwellings within the Development. Noxious or offensive activities shall not be carried on, in or from any Lot or Dwelling or in any part of the Common Areas, and each Owner and Occupant shall refrain from act or use of a Lot or Dwelling which could cause disorderly, unsightly or unkempt conditions, resulting in the cancellation of or increase in insurance coverage or premiums for any portion of the Development or be in violation of any law, statute, ordinance, rule, regulation or requirement of any Governmental Authority. Any Owner or Occupant who dumps, places or allows trash or debris to accumulate on his Lot, or any other portion of the Development shall be liable to the Association for all costs incurred by the Association to remove the same. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices other than security and fire alarm devices used exclusively for such purposes, shall be located, used or placed upon any Lot or Dwelling or other portion of the Development; provided, however, that the foregoing shall not apply to the Developer or for the use of the Common Areas. All clotheslines, garbage cans, trash cans, trash containers, woodpiles, swimming pool pumps, filters and related equipment and other similar items shall be located or screened so as to be concealed from view of neighboring streets and property and shall be kept in a clean and sanitary condition. Trash, garbage and any other refuse or waste shall not be kept on any Lot or dwelling except in sanitary containers or garbage compactor units; provided however, that trash cans, containers and large items can be moved to the side yard or curb of any dwelling on trash collection days for such Lot. No outdoor burning of leaves, branches, shrubbery or other natural organic materials shall be permitted on any Lot or Dwelling, or other portion of the Development, in any manner that could cause a nuisance or hazard to the community or any owner. No outdoor burning of trash, garbage, or manufactured materials shall be permitted on any Lot or Dwelling, or other portion of the Development except as required during construction. Any outdoor burning for any reason must be preceded with municipal permits for such as provided for by local ordinance.

Before, during and upon completion of construction, all building materials, debris, temporary storage and portable toilets must either be maintained on the property in an orderly fashion, disposed of in an expedient fashion where necessary or hidden away from street easements and other homes. At no time shall any debris, garbage, portable toilet or waste bin be placed in a fashion so as to be unsightly or in the street. All lot owners, prior to commencement of framing, shall place an adequate size refuse container at the rear or side

of dwelling for the purpose of removing construction debris and shall police the construction site as needed to ensure the debris and surplus material is not cluttering the lot. (In the event placement at the rear or side should work an unnecessary hardship, owner may apply for a waiver with the ACC). In the event that the builder or owner violates any of these rules, the Board shall have the right to assess the owner for any costs that may have been incurred to correct the problem in the event the owner or builder does not. Also, the owner is considered to be ultimately responsible for their builder's actions. All builders/owners will provide a portable toilet for each construction site. Each lot owner shall be responsible for all subcontractors and suppliers who provide material or services to the builder or owner during construction. Consequently, all lot owners shall ensure that their suppliers and subcontractors limit their activities to the lot upon which construction is in process. No supplier or subcontractor shall use driveways or lawns belonging to another lot owner to turn around vehicles, dump excess concrete or other materials, store materials, park vehicles or for any other purpose. Lot owners should advise their subcontractors and suppliers prior to entering into business relationship that the above policy is in effect. All lot owners, prior to lot clearing, shall construct a curb ramp to allow ingress and egress to the lot during clearing and construction. This ramp shall not protrude more than two (2) feet into the street and shall be constructed of wood or metal and shall be removed when construction is complete. No fill dirt or other material other than that detailed above shall be placed in the street. Also, to keep mud from getting into the street during construction, the lot owner shall place adequate gravel on the lot driveway leading up the dwelling to allow unloading of material or stage construction. No vehicles shall enter or exit the lot except at the graveled area and the ramp area. Any excessive mud brought into the development by a subcontractor or supplier shall be the responsibility of the lot owner/builder to remove from the street.

**Section 18. Vehicles, Machinery and Equipment.** The term "vehicles", as used herein, shall include, without limitation, motor homes, boats, trailers, motorcycles, minibikes, scooters, go-carts, trucks, campers, buses, vans, recreational vehicles, tractors, mowers, airplanes and automobiles. All vehicles shall be parked within garages, driveways or other paved parking areas located on a lot. Parking in yards and overnight parking on streets is prohibited.

No vehicle may be left upon any portion of the community, except in a garage or other area designated by the Board, for a period of 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 public highways. No towed vehicle, boat, trailer, bus, camper, recreational

vehicle, motor home, tractor, mower, or mobile home shall be temporarily kept or stored in the community for any period in excess of two (2) weeks unless kept in a garage or other area designated by the Board. No eighteen wheel trucks, or the cabs of such trucks shall be parked, kept or stored within the community. Small human-powered boats such as a canoe or kayak may be kept in the rear of property behind the dwelling, provided they are screened from view of the street, and shall not constitute an unsightly nuisance, rodent or insect hazard to the community.

Vehicles parked, kept or stored in violation of any part of this provision shall be considered a nuisance and may be removed from the community at the owners' expense.

**Section 19 Signage.** No signs or advertising posters of any kind shall be maintained or permitted within any windows or on the exterior of any Lot or Dwelling or elsewhere on any portion of the Property without the express written permission of the ACC. Notwithstanding the foregoing, the restrictions set forth in this Section shall not be applicable to: a) The Developer and the Association shall have the right, but not the obligation, to erect and maintain reasonable and appropriate signs on any portions of the Common Areas and within those easement areas established as Common Easements; b) Owners shall have the right to temporarily erect and maintain reasonable and appropriate real estate signs and political signs during the temporary period such activities are ongoing. All temporary signs must be cleaned-up and disposed by the respective owners. In no event shall any signage be attached, nailed or otherwise adhered to any tree or other plant life on a Lot or any portion of the property.

**Section 20. Above Ground Tanks and Wells.** No exposed above-ground tanks for the storage of fuel, water or any other substances shall be located on any Lot or Dwelling, or within any of the Common Areas, except as may be permitted by the ACC. No private water wells may be drilled or maintained.

**Section 21. Construction of Improvements.**

(a) During the construction of any Improvements:

(i) All Lots shall be maintained in a clean condition, free of debris and waste material.

**(ii) All unused construction materials shall be stored, to the extent practicable, out of view from any street.**

**(iii) All construction trash, debris and rubbish on each Lot shall be properly disposed of outside the Development at least weekly. Used construction materials may be burned on-site so long as such burning is conducted at the rear of such Lot or Dwelling and does not create a nuisance to other Owners or violate the laws, ordinances, codes, statues, rules or regulations of any applicable Governmental Authority; in no event, however, shall any used construction materials be buried on or beneath any Lot or Dwelling or any other portion of the Development. No debris or construction material may be placed in or around the creek or the river. No Owner, or Builder shall allow dirt, mud, gravel or other substances to collect or remain on any street. Each Owner and each Owner's contractor, subcontractors, laborers and suppliers shall cause all such dirt, mud, gravel and other substances to be removed from the treads of wheels of all vehicles used in or related to the construction of Improvements on a Lot or Dwelling prior to such vehicles traveling on any streets within the Development.**

**(b) During the construction of any Improvements or Dwellings, construction equipment and the vehicles of all contractors, subcontractors, laborers, material men and suppliers shall:**

**(i) Utilize off-street parking where possible.**

**(ii) Enter the Lot or Dwelling on which such Improvements are being constructed only from the driveway for such Lot or Dwelling**

**(iii) Not damage any trees or vegetation on such Lot.**

**(c) No construction trucks, equipment or machinery, including any trailers used for the transportation of construction equipment or machinery, shall be parked overnight on any streets or roads within the Development. Upon completion of construction, all construction machinery, tools and equipment, all unused construction materials and all trash, debris and rubbish shall be immediately removed from the Lot or Dwelling and such Lot or Dwelling shall be kept and maintained in a clean and uncluttered condition.**

**(d) All Dwellings and any other Improvements shall be constructed in compliance with the Architectural Standards and all applicable federal, state, county and local laws, ordinances, rules, regulations and zoning and building code requirements. Each Owner shall be responsible for obtaining from the appropriate Governmental Authorities all necessary permits and licenses and otherwise paying all required fees for the construction of any Improvements on such Owner's Lot. Each Owner shall also be responsible for strict compliance with the Architectural Standards and all applicable watershed protection, soil erosion and other governmental requirements, both during and after completion of construction of any Improvements on such Owner's Lot.**

**Section 22. Temporary Structures. No temporary house, trailer, shack, tent, barn, shed, stable, poultry house or yard, rabbit hut, treehouse or other outbuilding or structure of any kind, shall be permitted, constructed, installed or allowed to remain on any Lot or Dwelling; provided, however, that the foregoing shall not be deemed to prohibit (a) temporary structures for social functions as may be permitted by the rules and regulations of the Association, (b) any detached garages or other structures which are approved in writing by the ACC, (c) dog houses for not more than two dogs so long as such dog houses are visibly screened from view from all streets and adjacent lots, and (d) construction trailers and/or sales offices erected or placed on any part of the Property by the Developer.**

**Section 23. Subdivision and Interval Ownership. No Lot may be subdivided or re-subdivided so as to create a smaller lot without the prior written approval of the Association and the Developer, provided, however that the provisions of this Section shall not be applicable to Developer. No Lot or Dwelling shall be sold or owned under any time-sharing, time-interval or similar right-to-use programs.**

**Section 24. Swimming Pools and Tennis Courts. Swimming pools including above-ground pools, outdoor hot tubs, reflecting pools, saunas, whirlpools, lap pools and tennis courts may be constructed, installed and maintained on any Lot or Dwelling subject to the prior written approval of the plans for the same by the ACC.**

**Section 25. Guns and Firearms. The use of firearms in the Community is prohibited. The term "firearms" includes "B-B" guns, pellet guns, and firearms of all types.**

**Section 26. Drainage.** Catch basins and drainage areas are for the purpose of natural flow of water only. No obstruction or debris shall be placed in these areas. No owner or occupant of a lot may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains.

**Section 27. Hunting.** Hunting shall not be permitted on any of the land within Berry Hill Estates or surrounding Berry Hill Estates or the land that is part of the Berry Hill Sales Center.

**Section 28. Variances.** The ACC shall have the right to grant variances with respect to the provisions of Article VI and this Article VII with respect to any Lot or Dwelling. Any variance request submitted to the ACC shall be in writing and, upon approval of the same by the ACC, shall be evidenced by a written variance executed by the ACC.

**Section 29. Enforcement and Remedies.** In the event any of the provisions of this Article VII are breached or are not otherwise being complied with in all aspects by any Owner or Occupant, then the Association shall have the right, at their option, to (a) enjoin such violation or noncompliance and/or (b) through their designated agents, employees, representative and independent contractors, enter upon such Lot or Dwelling and take all action necessary to extinguish or correct such violation or breach. All cost and expenses incurred by the Association in enforcing any of the provisions of this Article VII, including without limitation, attorney's fees, court costs, costs and expenses of witnesses, engineers, architects, designers, land planners and any other persons involved in the correction of any noncompliance or the removal of such violation or in any judicial proceeding, together with any other costs or expenses incurred by the Association in connection therewith, shall be paid by such Owner who has violated or breached any of the provisions of this Article, shall constitute an individual Assessment to such Owner, and, if the same is not paid when due, shall be subject to the lien provided for and be subject to foreclosure as provided herein, notwithstanding anything provided herein to the contrary, the rights and remedies of the Association set forth herein shall not be deemed exclusive of any other rights and remedies which the Association may exercise.

**Section 30. Sidewalks.** All interior lots shall have sidewalks. Corner lots shall have sidewalks on both sides adjacent to the streets. Sidewalks shall be four (4) feet in width and four (4) inches deep and shall be constructed of concrete with expansion joints as appropriate. It shall be the responsibility of each lot owner to maintain their sidewalk. An easement of enjoyment is granted to all who have an

interest in Berry Hill Estates to use the sidewalks for walking, jogging, skating, bicycle, tricycles and so on.

**Section 31. Landscaping.** No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two and six feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points 25 feet from the intersection of the street lines. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines. No chain link fence or similar type fence shall be permitted.

Trees larger than six (6) inches in diameter at the base and all trees planted by declarant regardless of size that are outside or beyond five (5) feet of the house foundation, driveways or walks shall not be removed without prior written approval of the Architectural Control Committee, except for a) diseased or dead trees; b) trees needing to be removed to promote the growth of other trees, or for safety reasons.

## **ARTICLE VIII**

### **EASEMENTS**

**Section 1. Each Dwelling and the Property included in the Common Areas shall be subject to an easement for encroachments created by construction, and overhangs as designed or constructed by the Declarant. A valid easement for said encroachment and for the maintenance of same, so long as it stands, shall and does exist.**

**Section 2. Subject to the terms and conditions of these Covenants and the rules, regulations, fees and charges from time to time established by the Homeowners Association, Developer does hereby grant to each Owner and Occupant the nonexclusive right, privilege and easement of access to and the use and enjoyment of the Common Areas in common with Developer, its successors and assigns, all other Owners and Occupants. Subject to the provision of Article II-Property Rights and Section 3 (below), the easement and rights granted pursuant to this Section are and shall be permanent and perpetual, are nonexclusive, are appurtenant to and shall pass and run with title to each Lot and Dwelling.**

**Section 3. Grant of Easement to Governmental Authorities is hereby granted by the Developer to each branch, bureau, department and agency of any Governmental Authority and its respective agents, employees and representatives, a permanent, perpetual and nonexclusive easement over, across, through and upon Berry Hill Estates and all the roadways within the Development for the purpose of performing such duties and activities related to law enforcement, fire protection, trash and refuse collection, building inspection services, mail or package delivery, medical and emergency services and any other functions or duties to be performed by the Governmental Authorities as shall be required or appropriate from time to time.**

**Section 4. Easements of Enjoyment for walks, trails and other pathways is hereby established and Developer does hereby reserve for itself, the Association, their respective successors and assigns, a permanent and perpetual easement appurtenant over, across, through and upon a strip of land ten (10) feet in width on any side of any Lot or Dwelling and located within the Utility and Drainage easement for walks, trails and other pathways located on the side of any Lot and fifteen (15) in width for walking trails along the river or creek banks. The Developer also grants an easement of ten (10) feet in width on any lot lying parallel and directly adjacent to and abutting any public or private roadway, for the purpose of**



constructing, installing, maintaining, operating and replacing of traffic signs, street signs, street lights and related improvements, provided, however, that neither Developer nor the Association, by virtue of this sentence, shall have any obligation to construct any of the foregoing improvements.

**Section 5.** An easement for a perimeter wall is hereby created and Developer does hereby establish and reserve for itself, the Association and their respective successors and assigns, a permanent and perpetual easement appurtenant over, across, through and upon a strip of land fifteen (15) feet in width on the side of any Lot or Dwelling lying parallel to the perimeter boundary of the Development for the purpose of constructing, installing, maintaining, repairing, operation and replacing a perimeter wall, fence, mound or berm around the perimeter boundary of the Development; provided , however, that neither Developer, nor the Association, by virtue of this sentence, shall have an obligation to construct any such perimeter wall, fence, mound or berm.

**Section 6.** Reservation of Environmental Easement is hereby created. Developer does hereby establish for itself, the Association and their respective agents, employees, successors and assigns, a permanent and perpetual right and easement on, over, across and upon all Lots and all unimproved portions of any Dwellings for the purpose of taking action necessary to effect compliance with the rules, regulations and procedures from time to time promulgated or instituted by any Governmental Authorities or the Association for the protection and preservation of the environment and any natural areas.

**Section 7.** The Developer, the Association, any Governmental Agency, 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 Development by any Owner, Occupant or any other party.

**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 Association, acting on its behalf or on the written direction of all Owners subject to the taking, if any) by any authority having 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. The provisions of Article 4, Section 12, above, applicable to Common Property improvements damage or destruction, shall govern replacement or restoration and the actions to be taken in the event that the improvements are not replaced or restored.

**ARTICLE X**

**ANNEXATION OF ADDITIONAL PROPERTY**

**Section 1.** 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, 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. If such additional land is not subjected to this Declaration, 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.

## ARTICLE XI

### MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders of first Mortgages on Residences 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 a written request to the Association (such request to state the name and address of such holder, insurer, guarantor and the Residence 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 Residence 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 Residence 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 Residence 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 owners.

**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 the subsection);**

**(b) change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner of a Residence (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 there of 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 restriction 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 residence 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 Residence.

**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 Developer or the Board of Directors of the Association, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

**Section 6. Veterans Administration Approval.** As long as the Declarant has an option unilaterally to subject property to this Declaration as provided in Article X, the following actions shall require the prior approval of the Veterans Administration so long as the Veterans Administration is guaranteeing any Mortgage in the Community: annexation of additional property to the Community, except for annexation by Declarant in accordance with Article X, Section 1 hereof pursuant to a plan of annexation previously approved by the Veterans Administration; dedication of Common Property to any public entity, and material amendment of the Declaration, By-Laws or Articles of Incorporation.

**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 this 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 notice 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

### GENERAL PROVISIONS

**Section 1. Durations.** The provisions of this Declaration shall run with and bind the land and shall be and remain in effect perpetually to the extent permitted by law; provided, however, should any provision of Alabama law now or hereafter in effect limit the period during which covenants restricting land to certain uses may run, any provisions of this Declaration affected thereby shall run with and bind the land so long as permitted by such law; and such provisions shall be automatically extended for successive periods of ten (10) years or such shorter period as may be allowed by law, unless such extension is disapproved at a meeting duly called for such purpose by at least a Majority of the Association vote and, so long as the Declarant has an option unilaterally to subject additional Property to this Declaration as provided in Article X hereof, the written consent of Declarant. Such meeting must be held and a written instrument reflecting disapproval must be recorded within the year immediately preceding the beginning of a renewal period. Every purchaser or grantee of any interest in real property subject to this Declaration, by acceptance of a deed or other conveyance therefor, thereby agrees that such provisions of this Declaration may be extended and renewed as provided in this Section.

**Section 2. Amendment.** This Declaration may be amended unilaterally at any time and from time to time by the Board of Directors or the 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 Residences subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of Mortgage loans to enable such lender or purchaser to make or purchase Mortgage loans on the Residences 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 Residences subject to this Declaration as provided in Article X hereof. Declarant may unilaterally amend this Declaration for any 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.

In addition to the above, this Declaration may be amended at a regular or special meeting of the members by a vote of a majority of a quorum of members present or by proxy 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. 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.

**Section 3. 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 4. 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 5. 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 6. 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-five (25) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

**Section 7. Indemnification.** The Association shall indemnify every officer and Director against any and all expenses, including attorney's fees, imposed upon or reasonably incurred by any officer or Director 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 or Director. The officers and Directors 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 and Directors 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 such officers may also be Members of the Association) and the Association shall indemnify and forever hold each such officer and Director 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 or Director, or former Director or former officer, may be entitled. The Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such coverage is reasonably available.

**Section 8. Notice of Sale.** If an Owner sells his or her Residence, the Owner shall give to the Board, in writing, the name of the purchaser of the Residence and such other information as the Board may reasonably require.

**Section 9. Use of Word "Berry Hill Estates".** No person shall use the word "Berry Hill Estates" in the name of any commercial or residential building or any commercial or residential business or enterprise or in any printed or promotional material without the prior written consent of the Board of Directors or the Declarant. However, Owners or Occupants may use the term "Berry Hill Estates" in printed or promotional matter where such term is used solely to specify that particular property is located within Berry Hill Estates.

RUSS MUNGER ATTORNEY AT LAW -  
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FRANK BARGER Probate Judge  
File **2020-00013526**