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File **2019-00064329**

**DECLARATION  
OF PROTECTIVE COVENANTS  
FOR  
THE RETREAT AT ABBINGTON  
SUBDIVISION**

ATTN: PICK UP  
WJ (RECORDING) - 122

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**DECLARATION OF PROTECTIVE COVENANTS  
FOR THE RETREAT AT ABBINGTON**

**THIS DECLARATION OF PROTECTIVE COVENANTS FOR THE RETREAT AT ABBINGTON** (this "Declaration") is made as of the \_\_\_\_ day of August, 2019 by **DILTINA DEVELOPMENT CORPORATION**, an Alabama corporation ("Declarant").

**BACKGROUND  
STATEMENT**

A. Declarant is the Owner of all real property described on **Exhibit "A"** attached hereto (collectively, the "Property");

B. Declarant desires to subject the Property to the provisions of this Declaration to create a residential community and to provide the mechanism for the subjecting of other real property to the provisions of this Declaration;

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

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

**ARTICLE I  
Recitals; Definitions**

The above Background Statement is a material part of this Declaration and are hereby incorporated by reference.

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

**ARTICLE II  
Property Subject to This Declaration**

**Section 1. Property Hereby Subjected To This Declaration.** The Property is hereby subject to the covenants and restrictions hereinafter set forth and by virtue of the recording of this Declaration, shall be held, transferred, sold, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to this Declaration.

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

### **ARTICLE III Association Membership and Voting Rights**

**Section 1. Membership.** Every person or entity, including Declarant, which is the record owner of a fee or undivided fee interest in any Lot that is subject to this Declaration, shall be deemed to have a membership in the Association. The foregoing is not intended to include persons who or entities which hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. No Owner, whether one or more persons, shall have more than one membership per Lot owned. In the event of multiple Owners, votes and rights of use and enjoyment shall be as provided herein. Ownership of a Lot shall be the sole qualification for membership, which shall be appurtenant to and may not be separated from such ownership. The rights and privileges of membership, including the right to vote, may be exercised by a member or the member's spouse, but in no event shall more than one vote be cast for each Lot.

**Section 2. Voting.** The Association shall have two (2) classes of membership, Class "A" and Class "B", as follows:

(a) **Class "A":** Class "A" Members shall be all Owners with the exception of the Class "B" members, if any. Class "A" Members shall be Voting Members entitled to one (1) vote in the Association for each membership as set forth in Article III Section 1 hereof. There shall be only one vote per membership. When more than one Person is the Owner of any Lot, the vote for such Lot shall be exercised as those persons or entities themselves determine and advise the Secretary of the Association prior to any meeting. In the absence of such advice, the Lot's vote shall be suspended in the event more than one Person seeks to exercise it. Those Owners of property, if any, which is exempt from assessments as provided in Article IV, Section 12, hereof are Members of the Association and are subject to the provisions of this Declaration, but are not Owners of Residences and shall not, therefore, be entitled to vote. Any Owner of a Lot which is leased may, in the lease or other written instrument, assign the voting right appurtenant to that Lot to the lessee, provided that a copy of such instrument is furnished to the Secretary of the Association prior to any meeting. In the event of such assignment, the Occupant may vote the Owner's vote on all issues upon which the Owner would be entitled to vote. An Owner's right to vote may be suspended as provided in Article XI, Section 2, of this Declaration.

(b) **Class "B":** The Class "B" Member shall be the Declarant and any successor of Declarant who takes title for the purpose of development and sale, and who is designated as such in a recorded instrument executed by Declarant. The Class "B" Member shall be a Voting Member and shall be entitled to cast the number of votes which are contained in the total of all Class "A" Members, plus one (1) vote, until such time when Class "B" votes terminate and convert to class "A" votes.

The Class "B" membership shall terminate and become converted to Class "A" membership upon the happening of the earlier of the following:

- (i) When the last Lot of the total Lots permitted for the property delineated on the plat recorded in the Probate Office, Madison County has been conveyed; provided however, that there is no evidence of continuing development of any of the remaining property within one year from sale of the last Lot of The Retreat at Abbingdon Subdivision; the Class "B" Member shall be deemed a Class "A" Member; or
- (ii) January 1, 2030; or

- (iii) When, at his discretion, the Declarant so determines, with the approval of first mortgagee of Declarant.

From and after the happening of one of these events, whichever occurs earlier, the Class "B" Member shall be deemed to be a Class "A" Member. At such time, the Declarant shall call a meeting, as provided in the By-Laws of the Association for special meetings, to advise the membership of the termination of Class "B" status and to elect the remaining members of the Board of Directors.

#### **ARTICLE IV**

##### **Assessments**

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

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

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

**Section 4. Budget.** It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during the coming year, which may include a capital contribution or reserve. The Board Shall cause the assessments, based upon the Budget, to be levied against each Lot for the following year to be delivered to each Owner at least thirty (30) days prior to the end of the current fiscal year. The Board may not, without the consent of Declarant (so long as Declarant has an option unilaterally to subject additional real property to this Declaration as provided in Article IX hereof), impose a General Assessment per Lot which is more than one hundred thirty-five (135%) percent of the General Assessment for the immediately preceding fiscal year. In the event that the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been

determined, as provided herein, the budget in effect for the current year shall continue for the succeeding year.

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

**Section 6. Transfer Assessments.** In addition to the other assessments authorized herein, the Board may levy transfer assessments on any sale of any Lot subject to the terms of this Declaration. So long as the total amount of transfer assessments allocable to each Lot does not exceed the amount of the current General Assessment in any one (1) fiscal year, the Board may impose the transfer assessment. Any transfer assessment which would cause the amount of transfer assessments allocable to any Lot to exceed this limitation shall be effective only if approved by a majority of the total Association vote entitled to vote thereon and, so long as the Declarant has an option unilaterally to subject additional real property to this Declaration as provided in Article IX hereof, the consent of Declarant. Transfer assessments shall be collected at the closing of any sale of a Lot subject to the terms of this Declaration. Transfer assessments shall be used for the general benefit of the Association.

**Section 7. Lien for Assessments.** All sums assessed against any property subject to this Declaration pursuant to this Declaration, together with late charges, interest, costs, and reasonable attorney's fees actually incurred, as provided herein, shall be secured by a lien on such property in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such property, except for (a) liens of ad valorem taxes; and (b) liens for all sums unpaid on a first Mortgage. All other Persons acquiring liens or encumbrances on any property subject to this Declaration after this Declaration shall have been recorded in the records of the Office of the Judge of Probate, Madison County, Alabama shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

**Section 8. Effect of Nonpayment of Assessments; Remedies of the Association.** Any assessments which are not paid in full by the date specified by the Board, ("due date"), shall be delinquent. Any assessment delinquent shall incur a late charge of up to twenty-five and no/100 Dollars (\$25.00) dollars, per day, or in such amount as the Board may from time to time determine. If the assessment is not paid when due, a lien, as herein provided, shall attach and, in addition, the lien shall include the late charge, interest on the principal amount due, and all late charges from the date first due and payable, all costs of collection, reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law. In the event that the assessment remains unpaid after ninety (90) days, the Association may, as the Board shall determine, institute suit to collect such amounts and to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Association and its agents the right and power to bring all actions against him or her, personally, for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting through the Board and on behalf of the Owners, shall have the power to bid at any foreclosure sale or to acquire, hold, lease, mortgage, or convey foreclosed



property. No Owner may waive or otherwise exempt himself from liability for the assessments provided for herein, including, by way of illustration, but not limitation, by non-use of Common Property, or abandonment of the Residence. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the By-Laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay assessments being a separate and independent covenant on the part of each Owner. All payments shall be applied first to costs and attorney's fees, then to late charges, then to interest and then to delinquent assessments.

**Section 9. Date of Commencement of Assessments.** The assessments provided for herein shall commence upon conveyance of each Lot by Declarant to an Owner and said assessments shall be prorated as of the date of conveyance based on a calendar year beginning January 1 of said year. Notwithstanding the foregoing, the Declarant and any Lots owned by Declarant shall be exempt from payment of any assessments due hereunder until title to the subject Lot been sole and conveyed to a third-party.

**Section 10. Budget Deficits During Declarant Control.** The Declarant shall be solely responsible for a period of two (2) years from the day and date first above written to satisfy the deficit if any, between the actual operating expenses of the Association (but specifically not including an allocation for capital reserves) and the sum of the annual, special and specific assessments collected by the Association in any fiscal year. For so long as the Declarant has the authority to appoint the directors and officers of the Association, Declarant may: (i) advance funds to the Association sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association (but specifically not including an allocation for capital reserves), and the sum of the annual, special and specific assessments collected by the Association in any fiscal year, and such advances shall be evidenced by promissory notes from the Association in favor of the Declarant; or (ii) cause the Association to borrow such amount from a commercial lending institution at the then prevailing rates for such a loan in the local area of the Community. The Declarant in its sole discretion may guarantee repayment of such loan, if required by the lending institution, and a Mortgage secured by the Common Property or any of the improvements maintained by the Association may be given in connection with such loan.

**Section 11. Loans from Declarant.** The Declarant may, but shall in no way be required, loan money to the Association and/or advance funds to pay for insurance premiums, taxes, maintenance, and other expenses of the Association. The Association shall account for such loans/advances on an annual basis. At that time, upon request from the Declarant, the Association's officers shall execute a note in favor of Declarant with interest to accrue at ten percent (10%).

**Section 12. Specific Assessments.** The Board shall have the power to specifically assess pursuant to this Section as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. The Board may specifically assess Owners for the following expenses, except for expenses incurred for maintenance and repair of items which are the maintenance responsibility of the Association as provided herein:

- (a) Expenses of the Association which benefit less than all of the Owners may be specifically assessed equitably among all of the Owners which are benefited according to the benefit received.

(b) Expenses of the Association which benefit all Owners, but which do not provide an equal benefit to all Owners, may be specifically assessed equitably among all Owners according to the benefit received.

**Section 13. Exempt Property.** The following property shall be exempt from General Assessments and special and specific assessments:

(a) all property dedicated to and accepted by any governmental authority or public utility, including, without limitation, public schools, public streets, public parks, roads, rights-of-way, streets and easements; and

(b) all property owned by non-profit organizations dedicated to land preservation, or conservation, including, but not limited to, organizations such as the Huntsville Land Trust or the Alabama Conservancy, provided, however, the availability of the exemption for such non-profit organizations is contingent upon prior approval by the Board.

**Section 14. Association's Assignment of Assessment Rights to Creditor.** The Declarant, for so long as the Declarant has the authority to appoint the Directors and officers of the Association, or thereafter, the Board of Directors of Directors, may assign the rights to receive payments for assessments or Special Assessments from Owners, as well as the right to enforce the collection of assessments and special assessments by exercising the Association's authority under Section 6 of the Declaration to impose a lien against any Lot in favor of the Association for the benefit of the Creditor, or directly for the benefit of the Creditor, as a result of nonpayment of assessments.

**Section 15. Association's Grant of Power of Attorney to Creditor.** The Declarant, for so long as the Declarant has the authority to appoint the Directors and officers of the Association, or thereafter, the Board of Directors of Directors, may grant a limited purpose power of attorney to a Creditor for the specific purpose of enforcing the right to collection of assessments and special assessments by exercising the Association's authority under Section 6 of the Declaration to impose a lien against any Lot in favor of the Association for the benefit of the Creditor, or directly for the benefit of the Creditor, as result of nonpayment of assessments.

## **ARTICLE V**

### **Maintenance: Conveyance of Common Property by Declarant to Association; Lawn Area; Property Management**

**Section 1. Association's Maintenance Responsibility.** The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and improvements situated on the Common Property. In addition, if the following property exists in the Community, the Association may, as determined by the Board, maintain part or all of such property, regardless of whether it is Common Property: club house, community hiking and biking trails; grass and other landscaping along dedicated rights-of-way; sedimentation ponds; and community entrance features, including without limitation entrance monuments.

The Association shall maintain and repair the following: all lawns, including without limitation fertilizer, mowing, edging, weeding, pruning, mulching, pre-emergent, re-mulching, landscaping, trees, sprinkler systems and all appurtenances related thereto, located within the Lawn Area or Common Property. There shall be an individual lawn maintenance and repair fee making up part of each Lot's assessment that will fund the upkeep and maintenance of each Lot's lawn and landscaping pursuant to this Article V. The aforementioned lawn service shall be performed by a licensed landscape/lawn maintenance company as

selected by the Association. Owner(s) shall pay the lawn maintenance fee quarterly as determined by the Association.

The Association shall also maintain and repair the following: all lighting located within public alleys, pay for all electricity related to the Common Property, procure liability insurance for Common Property, and pay any ad valorem taxes on the Common Property.

The foregoing maintenance and repair obligations shall be performed consistent with the Community-Wide Standard.

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

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

**Section 2. Owner's Maintenance Responsibility.** To the extent not maintained by the Association pursuant to Section 1 of this Article V, each Owner shall maintain or cause to be maintained in a safe, clean and attractive condition all property subject to this Declaration which is owned directly or indirectly by such Owner in a manner consistent with the Community-Wide Standard and this Declaration. Such maintenance obligation shall include, without limitation, the following: Prompt removal of all litter, trash, refuse, and waste; keeping improvements, exterior lighting, and maintenance facilities in good repair and working order; keeping garden areas alive, free of weeds, and attractive; keeping driveways in good repair; complying with all governmental health and police requirements; and repair of exterior damages to improvements.

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

**Section 3. Party Walls and Party Fences.** Each wall or fence built which shall serve and separate any two (2) adjoining Residences or Lots shall constitute a party wall or fence and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. No party wall or fence shall be constructed in a manner that will interfere with the functioning of established drainage easements as set out on recorded plats affecting the Property.

No fence or fencing type barrier of any kind shall be placed, erected, allowed or maintained upon any portion of the Community, including any Residence, without the prior written consent of the ACC or its designee, such consent to be given in the ACC's sole and absolute discretion.

The cost of reasonable repair and maintenance of a party wall or fence shall be shared equally by the Owners who make use of the wall or fence. Unless expressly agreed to in writing signed by all applicable parties, including the party to be bound, under no circumstances whatsoever shall the Declarant, Woodland Homes of Huntsville, Inc. or Mike Friday be responsible to share in the costs of installation, maintenance or repair of fences or party walls.

Declarant hereby grants a construction and fence easement to each Owner, Woodland Homes of Huntsville, Inc. or any other approved fence contractor for the purpose of installation, maintenance, removal, and re-construction of any fence or party wall along any property line between or abutting adjacent Lots. This easement shall include the right and authority to tie into and connect to the existing fence on the adjacent Lot in connection with such installation, maintenance, removal, and re-construction. After taking action with respect to such easement the adjoining Lot and fence shall be restored to substantially the condition that existing prior to such use.

In the event of any dispute arising concerning a party wall or fence, or under the provisions of this Section, each party shall appoint one (1) arbitrator. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefor by the Board, the Board shall appoint an arbitrator for the refusing party. The arbitrators thus appointed shall appoint one (1) additional arbitrator and the decision by a majority of all three (3) arbitrators shall be binding upon the parties and shall be a condition precedent to any right of legal action that either party may have against the other."

**Section 4. Conveyance of Common Property by Declarant to Association.** The Declarant may transfer or convey to the Association any personal property and any improved or unimproved real property, leasehold, easement, or other real property interest which is or may be subjected to the terms of this Declaration. Such conveyance shall be accepted by the Association, and the property shall thereafter be Common Property to be maintained by the Association for the benefit of all or a part of its Members. Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section. The Declarant may place conservation restrictions or easements on Common Property prior to conveying it to the Association, regardless of whether or not the restriction is in place before the recording of a plat referencing "Common Area", if any. The Association shall accept such transfer or conveyance of Common Property from the Declarant subject to, and shall be responsible for, any mortgage loan encumbrances on said Common Property.

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

**Section 6. Amenities.** Notwithstanding anything else in this Declaration to the contrary, the Declarant shall have the unilateral right, but not the obligation, to construct a clubhouse, pool, or other amenities on the Common Property of the Community (collectively or individually, the "Amenities"). The determination of whether Amenities will be constructed on the Common Property will be determined in the sole and absolute discretion of the Declarant. This right shall include the express right to determine the type and quality of Amenities.

**Section 7. Financing of Amenities.** Notwithstanding anything else in this Declaration to the contrary, Declarant or the Board of Directors of the Association (with the prior consent of Declarant) may

unilaterally exercise, enforce, and carry out the rights of the Association to mortgage, pledge, or hypothecate any or all of the real property, including without limitation any clubhouse, pool, or other amenities, located within the Common Property of the Community. The rights described in this Article V, Section 7 shall include the express right to obtain construction and/or permanent financing or refinancing for the Amenities. The maker under any promissory note will be the Association. Any Mortgagee may rely on this Article V as affirmative and full evidence of the authority of the Declarant or Board of Directors, as the case may be, to execute such loan documents, on behalf of the Association, as may be reasonable and necessary to carry out the rights set forth in this Article V. The Declarant's rights set forth in this Article V shall not be subject to review or vote by the members of the Community.

**Section 8. Property Management.** The Board of Directors shall have the right to engage a professional property manager to manage and operate of the Association, which property manager may be an affiliate of Declarant.

## **ARTICLE VI**

### **Use Restrictions and Rules**

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

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

**Section 3. Signs.** No sign of any kind, including without limitation a "for sale" sign, shall be erected by an Owner or Occupant within the Community without the prior written consent of the ACC. To facilitate a Community-Wide Standard with respect to signage, the Association may, but shall not be obligated to, procure uniform "for sale" and other signage for the Community. Such signage may be purchased from the Association at rates to be set by the Board.

**Section 4. Vehicles and Garages.** The term "vehicles," as used herein, shall include, without limitation, motor homes, recreational vehicles, boats, trailers, motorcycles, mini-bikes, scooters, go-carts, trucks, campers, buses, vans, tractors, mowers and automobiles.

All vehicles shall be parked within garages, driveways, or other Board designated parking areas. Parking in yards and unpaved areas is prohibited.

Any vehicles that are kept in the Community or left upon any portion of the Community, except in a garage or other Board designated area, for periods longer than five (5) days shall be considered a nuisance and the Board, at its discretion, shall have the authority to remove the vehicle from the Community at the vehicle owner's expense.

Any unlicensed vehicles or vehicles in a condition such that it is incapable of being operated upon the public highways, is left upon any portion of the Community, except in a garage or other Board designated area, for periods longer than five (5) shall be considered a nuisance and the Board, at its discretion, shall have the authority to remove the vehicle from the Community at the vehicle owner's expense.

Any towed vehicle, boat, recreational vehicle, motor homes, or mobile home regularly stored in the Community or temporarily kept in the Community, except if kept in a garage or other Board designated area, for periods longer than seventy-two (72) hours each shall be considered a nuisance and the Board, at its discretion, shall have the authority to remove the vehicle from the Community at the vehicle owner's expense.

Trucks with mounted campers, or other commercial vehicles, which are an Owner's or Occupant's primary means of transportation shall not be considered recreational vehicles, provided they are used on a regular basis for transportation and the camper is stored out of public view upon removal.

No eighteen wheel trucks or the cabs of such trucks shall be parked, kept or stored within the Community, and if so parked, kept or stored shall be considered a nuisance and the Board, at its discretion, shall have the authority to remove the vehicle from the Community at the vehicle owner's expense.

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

Residences shall contain, as a minimum, a two-car garage; carports shall not be permitted. No front entry garages shall be permitted, except those approved by the ACC. Garage doors shall be kept closed at all times, except when garage is in use. Detached garages are allowed as long as they match the design of the house and have been approved by the ACC.

**Section 5. Leasing.** Residences may be leased for residential purposes. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration, By-Laws, use restrictions, and rules and regulations of the Association. The lease shall also obligate the tenant to comply with the foregoing and shall provide that in the event of noncompliance, the Board, in addition to any other remedies available to it, may evict the tenant on behalf of the Owner and specifically assess all costs associated therewith against the Owner and the Owner's property.

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

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

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

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

All maintenance of yards, unless specifically identified as being the responsibility of The Association, shall be the responsibility of such lot Owner. In the event that The Board of Directions of The Association determines that a yard is unsightly or unkempt The Board shall give the Owner written notice of noncompliance and demand for compliance. If Owner fails to comply the Board may assess a fine and/or bring the yard into compliance at the Owner's expense.

**Section 10. Architectural Standards.** No exterior construction, alteration, addition, or erection of any nature whatsoever shall be commenced or placed upon any part of the Community, except such as is installed by the Declarant, or as is approved in accordance with this Section, or as is otherwise expressly permitted herein. No exterior construction, addition erection, or alteration of any nature whatsoever shall be made unless and until plans and specifications showing at least the nature, kind, shape, height, materials, and location shall have been submitted in writing to and approved by ACC(s) established by the Declarant. A \$75.00 non-refundable plan review fee shall be paid to Declarant, its successors and assigns, which is to be submitted along with the proposed building plans. The following items, without limitation, must be submitted to the ACC for written approval; fences, basketballs goals, posts and hoops, detached buildings, detached garages and any other exterior items on the premises. The Declarant may employ for the ACC architects, engineers, or other Persons necessary to enable the Committee to perform its review. The ACC may, from time to time, delegate any of its rights or responsibilities hereunder to one (1) or more duly licensed architects or other qualified persons, which shall have full authority to act on behalf of the committee for all matters delegated and in the event of such delegation, the applicant shall be required to

pay any fees charged by such architects or other qualified persons. The Declarant/ACC may also delegate certain responsibilities to one or more Owners or other individuals.

The Declarant hereby appoints Mike Friday as the initial representative of the ACC.

In the event that the ACC fails to approve or to disapprove submitted plans and specifications within thirty (30) days after the plans and specifications have been submitted, unless additional information is required of homeowner, therefore thirty (30) from last correspondence. If no approval or no correspondence received within thirty days (30), approval will not be required, and this Section will be deemed to have been fully complied with. As a condition of approval under this Section, an Owner, on behalf of their 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 their 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. Any member of the Board or its representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any property to inspect for the purpose of ascertaining whether or not these restrictive covenants have been or are being complied with. Such Person or Persons shall not be deemed guilty of trespass by reason of such entry. In addition to any other remedies available to the Association, in the event of noncompliance with this Section, the Board may, as provided in Article XII, Section 1, hereof, record in the appropriate land records a notice of violation naming the violating Owner.

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

**Section 11. Antennas/Satellites.** No exterior antennas of any kind shall be placed, allowed, or maintained upon any portion of the Community, including any Residence without the prior written consent of the ACC or its designee. No free-standing antennas whatsoever shall be placed on any Residence. The ACC or its designee may approve the installation of radio antennas which do not protrude above the roof line of the Residence at its highest point and are not visible from the street in front of the Residence. Each Owner and Occupant acknowledges that this provision benefits all Owners and Occupants and each Owner and Occupant agrees to comply with this provision despite the fact that the erection of an outdoor antenna or similar device would be the most cost-effective way to transmit or receive the signals sought to be transmitted or received. The ACC or its designee may, at its discretion, approve a "satellite receiving dish". You must obtain prior written approval from the ACC before installation. There may be fees associated with installation of a "satellite receiving dish".



**Section 12. Tree Removal.** No trees shall be removed without the express consent of the Declarant or Board or their respective designee, except for (a) diseased or dead trees; (b) trees needing to be removed for safety reasons; or (c) trees in the immediate location of building approved by the ACC. Any tree(s) removed for death or disease must be replaced within 30 days by a like and kind of tree(s) such as in the community.

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

**Section 14. Site Distance at Intersections.** All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where this would create a traffic or sight problem.

**Section 15. Clotheslines, Garbage Cans, Woodpiles, etc.** All clotheslines, garbage cans, woodpiles, swimming pool pumps, filters and related equipment, air conditioning compressors and other similar items shall be located or screened so as to be concealed from view of neighboring streets and property. All rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate. Trash must be set out in appropriate trash containers no sooner than 6:00p.m. the evening prior to pick up. And containers should be removed no later than 6:00p.m. the evening of pickup. Declarant, however, hereby expressly reserves the right to dump and bury rocks and trees on property within the Community as needed for efficient construction and to allow developers and builders within the Community to bury rocks and trees removed from a building site on such building site. Trash, garbage, debris, or other waste matter of any kind may not be burned within the Community, except when done during the normal construction of a residence or by Declarant.

Exterior storage containers, including but not limited to PODS containers, shall not be left on any portion of the community, except by special written authorization of the Board, for any period longer than seven (7) days. After such seven (7) day period, such container shall be considered a nuisance and may be removed from the Community by the Board and the homeowner shall be responsible for the cost of the removal of the container.

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

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

**Section 18. Fences.** No fence or fencing type barrier of any kind shall be placed, erected, allowed or maintained upon any portion of the Community, including any Residence, without the prior written consent of the ACC or its designee, to be determined in its sole and absolute discretion. Any plans submitted to the ACC shall depict the style of fence, fence material, planned layout of the fence, including

locations of any required columns and type of column to be installed, and detailed dimensions, including location of any existing or planned structures on the Lot or Lots. Fences shall comply with the Community-Wide Standard. Only cedar stained arched shadow box style fences shall be permitted in the Community unless approved by the ACC.

**Section 19. Utility Lines.** No overhead utility lines, including lines for cable television, shall be permitted within the Community, except for temporary lines as required during construction and lines installed by or at the request of Declarant.

**Section 20. Air-Conditioning Units.** Except as may be permitted by the ACC or its designee, no window air conditioning units may be installed.

**Section 21. Artificial Vegetation, Exterior Sculpture, and Similar Items.** No artificial vegetation shall be permitted on the exterior of any property. Exterior sculpture, fountains, flag poles, and similar items must be approved by the ACC or its designee.

**Section 22. Energy Conservation Equipment.** No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless they are an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the ACC or its designee.

**Section 23. Swimming Pools/Jacuzzi Tubs or any such structure.** No building, structure or pool (above or in-ground) shall be erected, altered, placed or permitted on any lot except as allowed by written permission by the ACC or its designee.

**Section 24. Driveways.** Except as may be permitted by the ACC or its designee, driveways shall be constructed with concrete.

**Section 25. Exteriors.** Except as may be permitted by the ACC or its designee, the exterior of all improvements including, without limitation, Residences must be repainted in a color used in the original construction of Residences within the Community. No Residence exterior shall be constructed of untreated wood. All such wood exteriors must be painted or specifically approved by the ACC.

**Section 26. Window Coverings.** Aluminum foil on window panes, mirrored or reflective glass is not allowed.

**Section 27. Chimneys.** All chimneys that are on the exterior wall must have either brick or stone on the three exterior sides of the chimney.

**Section 28. Mailboxes.** Only approved mailboxes can be installed in the community. Each mailbox must be the designated model of the ACC, or its designee.

**Section 29. Landscaping.** The purpose of this restriction is to promote landscape development of single-family residential lots that will preserve and appreciate the value of the development by promoting a high quality, cohesive level of landscaping. These requirements may be altered or amended at the discretion of the ACC.

**Section 30. Storage Tanks.** Any storage tank located on any Lot requires prior written approval from the ACC. All storage tanks must be screened from street view. This can be accomplished with vegetation, brick and/or stone. If vegetation is used it must create a walled off effect. The screening is encouraged on all sides of the storage tank but is required only with respect to street views.

**Section 31. Basketball Goals.** No basketball goals, posts or hoops may be erected or constructed on any lot without the prior written consent of the ACC.

**ARTICLE VII**  
**Insurance and Casualty Losses**

**Section 1. Insurance on Common Property.** Upon completion of transfer of title of the Common Property from the Declarant to the Association, the Association's Board of Directors or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements on the Common Property and the entry features, if any, which the Association is obligated to maintain. This insurance shall provide, at a minimum, fire and extended coverage, including vandalism and malicious mischief, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Alternatively, the Board may purchase "all-risk" coverage in like amounts.

Upon completion of transfer of title of the Common Property from the Declarant to the Association, the Board may obtain a public liability policy applicable to the Common Property covering the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents, and, if reasonably available, directors' and officers' liability insurance. The public liability policy shall have a combined single limit of at least One Million (\$1,000,000.00) Dollars.

The Board is hereby authorized to contract with or otherwise arrange to obtain the insurance coverage required hereunder through the Declarant and to reimburse Declarant for the cost thereof, and Declarant shall be authorized, but not obligated, to purchase such insurance coverage for the benefit of the Association and the Owners upon Declarant and Association agreeing upon the terms and conditions applicable to reimbursement by the Association for costs incurred by Declarant in obtaining such coverage. Notwithstanding anything contained in this Declaration to the contrary, the Board shall not be required to comply with the provisions of this Article if the Board has contracted for or otherwise arranged to obtain the required insurance coverage through the Declarant.

Premiums for all insurance shall be common expenses of the Association. The policies may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association, as trustee for the respective benefited parties, as further identified in subparagraph (b) below. Such insurance shall be governed by the provisions hereinafter set forth:

- (a) All policies shall be written with a company licensed to do business in Alabama and holding a rating of B or better as established by A. M. Best Company, Inc., if available, or, if not available, the most nearly equivalent rating.
- (b) 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.
- (c) 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.

(d) All insurance policies shall be reviewed annually by one or more qualified persons.

(e) 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 anyone 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 2. Property Insured By Association: Damage and Destruction.** 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%) percent 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 real property to this Declaration as provided in Article IX hereof, 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.

Any Mortgagee of Declarant or the Association shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed; provided, however, no Mortgagee of any Lot, unless such Lot is owned by the Declarant, 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 of 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 3. 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 that the Association does not carry insurance on the Owner's property, each individual Owner 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.

**Section 4. 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 VIII**

### **Condemnation**

Whenever all or any part of the Common Property shall be taken (or conveyed in lieu of and under threat of condemnation by the Board, acting on its behalf or on the written direction of all Owners subject to the taking, if any) by any authority having the power of condemnation or eminent domain, the Association shall represent the Owners. The award made for such taking shall be payable to the Association as trustee for all Owners. The provisions of Article VII, Section 2, 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 restored or replaced.

## **ARTICLE IX**

### **Annexation of Additional Property**

**Section 1. Unilateral Annexation by Declarant.** As the owner thereof or, if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege, and option from time

to time at any time until ten (10) years after the recording of this Declaration to subject all or any portion of the real property located within one-half (1/2) mile of the Property described on Exhibit "A" attached hereto, 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 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 X**

### **Mortgagee Provisions**

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

**Section 1. Notices of Action.** An institutional holder, insurer, or guarantor of a first Mortgage, who provides written request to the Association (such request to state the name and address of such holder, insurer, guarantor and the 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 Lot on which there is a first Mortgage held, insured, or guaranteed by such eligible holder;
- (b) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by an Owner of a Lot of any obligation under the Declaration or By-Laws of the Association which is not cured within sixty (60) days;
- (c) any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or
- (d) any proposed action which would require the consent of a specified percentage of eligible holders.

**Section 2. No Priority.** No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

**Section 3. Notice to Association.** Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

**Section 4. Amendment by Board.** Should the Veterans Administration or the Federal National Mortgage Association subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause amendments to this Article to be recorded to reflect such changes.

**Section 5. Applicability of Article X.** Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws, or Alabama law for any of the acts set out in this Article.

**Section 6. Failure of Mortgagee to Respond.** Any Mortgagee (or insurer or guarantor of a Mortgage) who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request.

## **ARTICLE XI**

### **Easements**

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

**Section 2. Easements for Use and Enjoyment of Common Property.** Every Member shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Property which shall be appurtenant to and shall pass with the title to his or her property, subject to the following provisions:

(a) the right of the Board to charge reasonable admission and other fees for the use of any portion of the Common Property, including, without limitation, to limit the number of guests who may use the Common Property, to allow Persons who are not Members of the Association, such as Persons living or working in the vicinity of the Community, to use the Common Property on a regular or temporary basis and to charge or not charge a user fee therefore, and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by an Owner, his or her family, tenants, guests, Occupants, and invitees;

(b) the right of the Board to suspend the voting rights of an Owner and Occupant and the right of an Owner and Occupant to use the Common Property recreational facilities in the Community, if any, for any period during which any assessment which is hereby provided for remains unpaid; and, for a reasonable period of time for an infraction of the Declaration, By-Laws, use restrictions, rules and regulations or design guidelines;

(c) the right of the Board to borrow money for the purpose of improving the Common Property, or any portion thereof, or for construction, repairing or improving any facilities located or to be located thereon, and give as security for the payment of any such loan a Mortgage conveying all or any portion of the Common Property; provided, however, the lien and encumbrance of any such

Mortgage given shall be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for the benefit of Declarant, or any Residence or Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Owner encumbering any Lot or other property located within the Community. (Any provision in this Declaration or in any such Mortgage given by the Board to the contrary notwithstanding, the exercise of any rights therein by the holder thereof in the event of a default there under shall not cancel or terminate any rights, easements or privileges herein reserved or established for the benefit of Declarant, or any Residence or Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Owner encumbering any Lot or other property located within the Community.); and

(d) the right of the Board to dedicate or transfer all or any portion of the Common Property subject to such conditions as may be agreed to by the Owners. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved by at least a Majority of the Association, in person or by proxy, at a meeting duly called for such purpose (or, if a meeting is not called, upon the affirmative vote of at least a Majority of the votes cast in a referendum on the issue) and, so long as the Declarant has an option unilaterally to subject additional real property to this Declaration as provided in Article IX hereof, by the Declarant.

An Owner's right of use and enjoyment in and to the Common Property and facilities located thereon shall extend to the members of his or her family and guests. Land Owner shall be deemed to have made a delegation of all such rights (except for the right of ingress and egress to the Owner's property) to the Occupants of any leased Residence. Upon the affirmative vote of the Majority of the Association vote present, in person or by proxy, at a meeting duly called for such purpose (or, if a meeting is not called, upon the affirmative vote of at least a Majority of the votes cast in a referendum on the issue) and, so long as the Declarant has an option unilaterally to subject additional Real Property to this Declaration as provided in Article IX hereof, the consent of Declarant, the Board may alter the use of any Common Property. For example, and by way of illustration and not limitation, the Board may convert tennis courts into a basketball court or vice versa.

An Owner's right of use and enjoyment in and to the Common Property and facilities located thereon shall not give any Owner the right of ingress or egress across any Lot to obtain access to such Common Property.

**Section 3. Reserved Easements for the Provision of Services to the Community.** There is hereby reserved to the Declarant, its successors and assigns blanket easements upon, across, above and under all real property within the Community for access, ingress, egress, installation, repairing, replacing, maintaining, and removing Lawn Areas, rights-of-way, drainage facilities, flood way easements, and all utilities serving the Community or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone and electricity, and any other similar service such as, but not limited to, a master television antenna system, cable television system, video system, or security system which the Declarant might decide to have installed to serve the Community or any portion thereof. It shall be expressly permissible for the Declarant and its successors and assigns to install, repair, replace, maintain, and remove or to authorize the installation, repair, replacement, maintenance, or removal of such wires, conduits, cables and other equipment related to the providing of any such utility or service. Declarant and its successors and assigns shall full rights of ingress and egress at all times over all portions of the Community for the installation, operation, maintenance, repair, or removal of any of the foregoing utilities or services and shall have the right to remove any unauthorized obstruction placed in or on any of the foregoing easements that would, in the sole discretion of Declarant or its successors and assigns, interfere with the use of the above installation of the foregoing utilities or services. In no event shall the foregoing prohibit paving or landscaping within such easements. Declarant shall have the right to assign and convey, in whole or in part, the easements



reserved by it hereunder to one or more public utility companies, quasi-public service companies, or relevant governmental authorities. All utilities except drainage installed within the above described easements shall be installed underground. This reserved easement may be assigned by Declarant by written instrument to the Association, and the Association shall accept such assignment upon such terms and conditions as are acceptable to Declarant. Rights exercised pursuant to such reserved easements shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

## **ARTICLE XII**

### **Amenities/Financing of Amenities**

**Section 1 Amenities.** Notwithstanding anything else in this Declaration to the contrary, the Declarant shall have unilateral right, but not the obligation, to construct a clubhouse, pool, or other amenities within the Common Areas of the Subdivision (collectively or individually, the "Amenities"). The determination of whether Amenities will be constructed in the Common Areas will be determined in the sole and absolute discretion of the Declarant. This right shall include the express right to determine the type and quality of Amenities.

**Section 2. Financing of Amenities.** Notwithstanding anything else in this Declaration to the contrary, Declarant may unilaterally exercise, enforce, and carry out the rights of the Association to mortgage, pledge, or hypothecate any or all of the real property, including without limitation any clubhouse, pool, or other amenities, located within the Common Areas of the Subdivision. The rights described in this Article XII, Section 2 shall include the express right to obtain construction and/or permanent financing or refinancing for the Amenities. The maker under any promissory note will be the HOA, as executed by Declarant. Any Mortgagee may rely on this Article XII as affirmative and full evidence of the authority of Declarant to execute such loan documents, on behalf of the HOA, as may be reasonable and necessary to carry out the rights set forth in this Article XII. The Declarant's rights set forth in this Article XII shall not be subject to review or vote by the members of the Subdivision.

## **ARTICLE XIII**

### **General Provisions**

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

After failure of any Owner to cure a violation under the terms and conditions of this Declaration after ten (10) days notice and opportunity to cure, the Declarant or Board, as the case may be, shall have the right to impose a fine of up to \$200.00 per Lot per occurrence (the "Fine") for a violation of the terms and conditions of this Declaration. For every day after the tenth (10<sup>th</sup>) day that the violation continues, the

Declarant or Board, as the case may be, shall have the right to increase the Fine by \$5.00 dollars per day. The Fine shall be considered an Assessment as such term is used in Article IV herein.

**Section 2. Self-Help.** In addition to any other remedies provided for herein, the Board or its duly authorized agent shall have the power to enter upon a Residence or any portion of a Lot or any other part of the Community to abate or remove, using such force as may be reasonably necessary, without limitation any erection, tree, shrubbery, landscaping, improvement, or thing or condition which violates this Declaration, the By-Laws, the rules and regulations, the use restrictions, or the design guidelines. Except in the case of emergency situations and towing, the Board shall give the violating Owner at least ten (10) days' written notice of its intent to exercise self-help. All costs incurred shall be assessed against the violating Owner and shall be collected as provided for herein for the collection of assessments.

**Section 3. 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 total Association vote (or, if a meeting is not called, upon the affirmative vote of at least a Majority of the Association votes as recorded by a referendum on the issue) and, so long as the Declarant has an option unilaterally to subject additional Real Property to this Declaration as provided in Article IX hereof, the written consent of Declarant. Such meeting or referendum 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 any 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 4. Amendment.** This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (b) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of Mortgage loans, including, for example, without limitation the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, or a State or National Bank, to enable such lender or purchaser to make or purchase Mortgage loans on the Lots and 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 Lots and Residences subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Owner's property unless any such Owner shall consent thereto in writing. Further, so long as Declarant has the right unilaterally to subject additional property to this Declaration as provided in Article IX hereof, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not adversely affect title to the Real Property of any Owner without the consent of the affected Owner or Occupant.

In addition to the above, this Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of at least a majority vote of the total Association vote entitled to vote thereon or 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 IX hereof, the consent of the Declarant. In the event of a conflict between the Board and the Association, the Board's decision controls. A meeting may be called (but shall not be required to be called) to consider and vote upon any amendment.

Amendments to this Declaration shall become effective upon recordation, unless a later effective date is specified therein.

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

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

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

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

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

**Section 9. 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 or Directors 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 officer or Director, 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 10. Construction and Sale Period.** Notwithstanding any provisions contained in this Declaration, the By-Laws, Articles of Incorporation, use restrictions, rules and regulations, design guidelines, and any amendments thereto, until Declarant's right unilaterally to subject property to this Declaration as provided in Article IX terminates, it shall be expressly permissible for Declarant and any builder or developer approved by Declarant to maintain and carry on, upon such portion of the Community as Declarant may deem necessary, such facilities and activities as in the sole opinion of Declarant may be required, convenient, or incidental to Declarant's and such builder's or developer's development, construction, and sales activities related to the Property, as it may be amended from time to time, to this

Declaration, including, but without limitation: the right of access, ingress and egress for vehicular and pedestrian traffic over, under, on or in the Community; the right to tie into any portion of the Community with driveways, parking areas and walkways; the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain and repair any device which provides utility or similar services including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community; the right to carry on sales and promotional activities in the Community, including directional and sales signs in the common areas; and the right to construct and operate business offices, signs, banners, flags, construction trailers, sales offices, model residences with fences, gates and walkways, and hold open houses and Parades of Homes for the public. Declarant and any such builder or developer may use Residences or offices owned or leased by Declarant or such builder or developer as model Residences and sales offices. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

**Section 11. Books and Records.** This Declaration, the By-Laws, the Articles of Incorporation, copies of rules and regulations, use restrictions, design guidelines, membership register, books of account, and minutes of meetings of the Members, or the Board and of committees shall be made available for inspection and copying by any Member of the Association or by the duly appointed representative and by holders, insurers, or guarantors of any first Mortgage at any reasonable time and for a purpose reasonably related to his or her interest as a Member or holder, insurer, or guarantor of a first Mortgage at the office of the Association or at such other reasonable place as the Board shall prescribe.

The Board shall establish reasonable rules with respect to:

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

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

**Section 12. Audit.** An audit of the accounts of the Association may be made annually in such manner as the Board may decide. Upon written request of any institutional holder of a first Mortgage, such holder, upon payment of the costs associated therewith, shall be entitled to receive a copy of a financial statement within ninety (90) days of the date of the request.

**Section 13. Notice of Sale.** If an Owner intends to sell his or her Lot, the Owner shall deliver at least fifteen (15) days prior written notice to the Board, the Owner shall pay to the Association any applicable transfer assessments at closing, and deliver the name of the purchaser of the Lot and such other information as the Board may reasonably require. If an Owner fails to notify the Board of such a sale, then the Owner will be personally responsible for any uncollected dues (for the subsequent year), any transfer assessments, and the Board reserves the right to obtain a judgment against the Owner for any such uncollected dues.

**Section 14. Estoppel Certificate.** Upon the request of any Member, the Board or its designee shall furnish a written certificate signed by an officer or agent of the Association regarding unpaid assessments levied against that Member's property and any violations of the Declaration, By-Laws, use restrictions, rules and regulations, or design guidelines by any Owner or Occupant of such property. Such

certificate shall bind the Association with respect to the foregoing matters. The Association may require the advance payment of a processing fee not to exceed Seventy-five (\$75.00) Dollars for the issuance of each such certificate.

**Section 15. Agreements.** Subject to the prior approval of Declarant, so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article IX above, all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board shall be binding upon all Owners, their heirs, legal representatives, successors, assigns, and other having an interest in the Community or the privilege of possession and enjoyment of any part of the Community.

**Section 16. Implied Rights.** The Association may exercise any right or privilege given to it expressly by the Declaration, the By-Laws, the Articles of Incorporation, any use restriction or rule, the design guidelines and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it therein or reasonably necessary to effectuate any such right or privilege.

**Section 17. Deviations.** The Board or its designee or the declarant so long as the Declarant has an option to subject additional property to the declaration as provided in Article X above, may, in the exercise of its discretion, permit deviations from the restrictions contained in this Declaration, the By-Laws, the rules and regulations, the use restrictions, and the design guidelines.

**Section 18. Use of Word "The Retreat at Abbington Ridge".** No Person shall use the word "The Retreat at Abbington" or 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 Declarant. However, Owners or Occupants may use the term "The Retreat at Abbington" in printed or promotional matter where such term is used solely to specify that particular property is located within subject Subdivision.

**Section 19. Architectural Control Committees.** Unless relinquished earlier, the Declarant shall have complete control of the ACC for so long as it shall own property in the Community, as expanded, plus an additional six-month period. Declarant shall have veto power over the Board as set forth in the Bylaws.

*[Signatures Commence on Following Page]*

20 IN WITNESS WHEREOF, the undersigned, have executed this instrument under seal this the day of August, 2019.

**DILTINA DEVELOPMENT CORPORATION,**  
an Alabama corporation

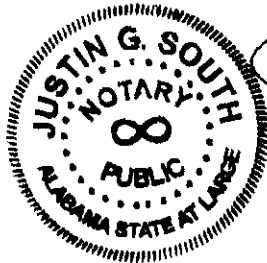
By: \_\_\_\_\_  
Name: Michael W. Friday  
Its: President

STATE OF ALABAMA

COUNTY OF MADISON

I, the undersigned Notary Public in and for said county and state, hereby certify that Michael W. Friday, President of DILTINA DEVELOPMENT CORPORATION, an Alabama corporation, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such president and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this the 20 day August, 2019.



\_\_\_\_\_  
Notary Public

My Commission Expires:

12/14/20

**This instrument prepared by:**

Thompson Burton PLLC  
One Franklin Park  
6100 Tower Circle, Suite 200  
Franklin, TN 37067  
(615) 465-6000

**EXHIBIT "A"**

**Legal Description of the Property**

Land in Madison County, Alabama, being Lots 2, 3, 4, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, and 115 and Common Area "A" and Common Area "B" on "Final Plat of The Retreat at Abbingdon, a Subdivision of Tract A of Halcyon Subdivision Document No. 201001150000253400", recorded as File No. 2019-00024430, Official Records of Madison County, Alabama, to which plan reference is hereby made for a more complete description.

## **EXHIBIT "B"**

### **Definitions**

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

- a) "Association" or "HOA" shall mean The Retreat at Abbingdon Homeowner's Association, Inc., a non-profit Alabama corporation, its successors and assigns. The "Board of Directors" or "Board" of the Association shall be the appointed or elected body, as applicable, having its normal meaning under Alabama Corporate Law.
- b) "ACC" means the Architectural Control Committee.
- c) "By-Laws" shall refer to the By-Laws of the Association and incorporated herein by reference.
- d) "Common Property" or "Common Area" shall mean any and all real and personal property and easements and other interests therein, together with the facilities and improvements located thereon, now or hereafter owned by the Association for the common use and enjoyment of the Owners.
- e) "Community" or "Subdivision" shall mean and refer to that certain real property and interests therein described in **Exhibit "A"**, attached hereto, and (i) such additions thereto as may be made by Declarant by Supplementary Declaration; and (ii) such additions thereto as may be made by the Association by Supplementary Declaration of other real property.
- f) "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. Such determination, however, must be consistent with the Community-Wide Standard originally established by the Declarant.
- g) "Declarant" shall mean and refer to Diltina Development Corporation, an Alabama corporation, and its successors in interest and assigns; provided any conveyance or assignment of "Declarant's Rights" must be in writing, specifically state that it represents an assignment of Declarant's Rights, and include an assumption of liabilities and obligations under the Declaration. Any such assignment must be properly recorded with the Probate Court for Madison County, Alabama to be an effective assignment of Declarant's Rights.
- h) "Lawn Areas" shall mean all areas on a Lot that are not within the building footprint of a home constructed on such Lot.
- i) "Lot" or "Lots" shall mean any plat of land within the Community, whether or not improvements are constructed thereon, which constitutes or will constitute, after the construction of improvements, a single-family dwelling site as shown on a plat recorded or to be recorded in the land records of the county whether the Community is located. The ownership of each Lot shall include, and there shall pass with each Lot as an appurtenance thereto, whether or not separately described, all of the right, title and interest of an Owner in the Common Property, which shall include, without limitation, membership in the Association.
- j) "Majority" means those eligible votes, Owners, or other group as the context may indicate totaling more than fifty (50%) percent of the total eligible number.



- k) "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.
- l) "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.
- m) "Owner" shall mean and refer to the record Owner, whether one or more persons, of the fee simple title to any Lot located within the Community, excluding, however, any Person holding such interest merely as security for the performance or satisfaction of any obligation.
- n) "Person" means any natural person, as well as a corporation, joint venture, partnership (general or limited), association, trust, or other legal entity.
- o) "Supplementary Declaration" means an amendment or supplement to this Declaration which subjects additional property to this Declaration or imposes, expressly or by reference, additional restrictions and obligations on the land described therein, or both.
- p) "Woodland" means Woodland Homes of Huntsville, Inc., its successor or assigns.

Filed/Cert: 10/02/2019 10:15:00 AM  
Fee Amt: \$105.75 Page 33 of 33  
Madison County, AL  
FRANK BARGER Probate Judge  
File **2019-00064329**