

STATE OF ALABAMA

COUNTY OF SHELBY

**DECLARATION OF PROTECTIVE COVENANTS  
OF  
EMERALD LAKE & DAM**

KNOW ALL MEN BY THESE PRESENTS, That:

WHEREAS, Stephen H. Lee, (herein the "Developer"), is the owner of the following described real property:

EMERALD LAKE, Plat No. 1, Lots 21, 22, 23, 25, 26, 27, 28, 29, as recorded in Map Book 19, Page 30, in the Probate Office of Shelby County, Alabama (referred to herein as "Emerald Lake & Dam" or the "Property").

WHEREAS, Developer desires to subject the Property to this Declaration and each lot located in said survey to the conditions, limitations, restrictions.

NOW, THEREFORE, DEVELOPER does hereby proclaim, publish and declare that the Property shall be held, conveyed, hypothecated or encumbered, rented, used, occupies and improved subject to the Declaration, which shall run with the land and shall be binding upon Developer and upon all parties having or acquiring any right, title or interest in any part of the Property.

**ARTICLE I**

**MUTUALITY OF BENEFIT AND OBLIGATION**

The Restrictions set forth herein are made for the mutual and reciprocal benefit of each and every part of the Property and are intended to create mutual, equitable servitudes upon each such part of the Property and in favor of each and all such parts of the Property therein, to create reciprocal rights between the respective owners and future owners of such Property; and to create a privity of contract and estate between the grantees of said Property, their heirs, successors and assigns. All of the Property shall be held, transferred, sold, conveyed, used, leased, occupies, mortgaged or otherwise encumbered subject to all the terms and provisions of this Declaration, including, but not limited to, the lien provisions set forth in Article V.

**ARTICLE II**

**DEFINITIONS**

**SECTION 2.1 Association.** The Emerald Lake & Dam Association, Inc., its successors and assigns.

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SHELBY COUNTY JUDGE OF PROBATE  
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2.2 Association Land. Such real property (including the lake and dam) conveyed to the Association, and all improvements located thereon, for so long as the Association or successor thereof may be the owner thereof.

2.3 Board. The Board of Directors of the Association.

2.4 Charter. The Articles of Incorporation of the Association.

2.5 Declaration. This Declaration of Protective Covenants of Emerald Lake & Dam which shall be recorded in the Probate Records of Shelby County, Alabama, as the same may from time to time be supplemented or amended in the manner described therein.

2.6 Deed. Any deed, assignment, lease, or other instrument conveying fee title or a leasehold interest in any Lot subjected to these Restrictions.

2.7 Developer. Stephen H. Lee, his successors, heirs, and assigns.

2.8 Lot. A residential lot in Emerald Lake & Dam, platted of record.

2.9 Member. A person or other entity who is record owner of a Lot.

2.10 Member's Property. All Lots which are subjected to the Declaration.

2.11 Owner. The owner of a Lot.

2.12 Property. The real property described as: Emerald Lake, 1st Sector, Lots 21, 22, 25, 26, 27, 28, 29, as recorded in Map Book 19, Page 30, in the Probate Office of Shelby County, Alabama.

2.14 Resident. Any person or persons occupying or leasing Member's Property.

2.15 Restrictions. The covenants, agreements, easements, charges and liens created or imposed by this Declaration.

### ARTICLE III

#### CONSTRUE WITH EMERALD LAKE SUBDIVISION COVENANTS

This Declaration shall be read, construed and interpreted in a manner consistent with the Declaration of Protective Covenants, Agreements, Easements, Charges, and Liens for Emerald Lake Subdivision, as recorded in Instrument Number 1994-36305, in the Probate Office of Shelby County, Alabama.

## ARTICLE IV

### ASSESSMENT OF ANNUAL CHARGE

**SECTION 4.1 Assessment.** For the purpose of providing funds for use as specified in Article VI hereof, the Association shall in each year assess against each Lot a charge equal to a specified number of dollars per Lot; provided, however, that until the Developer has conveyed a majority of the Lots within Emerald Lake and Dam, the annual charge shall not exceed \$50.00 per year, as may be adjusted upward annually, commencing January 1, 1994, in an amount not to exceed ten percent (10%) of the maximum amount (of such \$50.00, as escalated) which could have been charged the preceding year. Each such Lot shall be charged with the subject to a lien for the amount of such separate assessment which shall be deemed the "Annual Charge" with respect to such Lot.

**4.2 Date of Commencement of Annual Charge.** As soon as may be practical in each year, the Association shall send a written bill to each Member stating the amount of the Annual Charge assessed against each such Lot. At the option of the Association, the Annual Charge may be billed in one installment, or may be billed in Quarterly or monthly installments. Any installment not paid within thirty (30) days following the date of receipt of the bill shall be deemed delinquent and will bear interest at the rate of twelve percent (12%) per annum until paid.

**4.3 Effect of Nonpayment of Assessments; Remedies of Association.** If the Member shall fail to pay any installment of the Annual Charge within thirty (30) days following receipt of the bill referred to in Section 4.2 hereof, and within thirty (30) days after additional written notice that the Member is delinquent in his payment, in addition to the right to sue the Member for a personal judgment, the Association shall have the right to enforce the lien hereinafter imposed to the same extent, including a foreclosure sale and deficiency decree, and subject to the same procedures, as in the case of mortgages under applicable law, and the amount due by such Member shall include the Annual Charge, as well as the cost of such proceedings, including a reasonable attorney's fee, and the aforesaid interest. In addition, the Association shall have the right to sell the property at public or private sale after giving notice to the Member (by registered mail or by publication in a newspaper of general circulation in the County where the Parcel is situated at least once a week for three successive weeks) prior to such sale.

**4.4 Certificate of Payment.** Upon written demand by a Member, the Association shall within a reasonable period of time issue and furnish to such Member a written certificate stating that all Annual Charges (including interest and costs, if any) have been paid with respect to any specified Lot as of the date of such certificate, or if all Annual Charges have not been paid, setting forth the amount of such Annual Charges (including interest and costs, if any) due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificates which must be paid at the time that the request for such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and any bona fide purchaser of, or lender on, the Lot in question.

## ARTICLE V

### IMPOSITION OF CHARGE AND LIEN UPON PROPERTY

**SECTION 5.1 Creation of Lien for Assessments.** All Lots shall be subject to a continuing lien for assessments levied by the Association in accordance with the provisions of this Declaration. The Annual Charge together with interest thereon and the costs of collection thereof including reasonable attorney's fees as herein provided, shall be a charge on the shall be a continuing lien upon the Lot against which each such assessment or charge is made.

**5.2 Personal Obligation of Members.** Each Member, by acceptance of a deed or other conveyance to a Lot, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay the Association the Annual Charges.

**5.3 Subordination of Lien to Mortgages.** The lien of any assessment or charge authorized herein with respect to any Lot is hereby made subordinate to the lien of any bona fide mortgage on such Lot if, but only if, all assessments and charges levied against such Lot falling due on or prior to the date such mortgage is recorded has been paid. The sale or transfer of any Lot pursuant to a mortgage foreclosure proceeding or a proceeding in lieu of foreclosure or the sale or transfer of such Lot pursuant to a sale under power contained in a mortgage on such property shall extinguish the lien for assessments falling due prior to the date of such sale, transfer or foreclosure, but the Association shall have a lien on the proceeds of such sale senior to the equity or right of redemption of the mortgagor. The foregoing subordination shall not relieve a Member whose Lot has been mortgaged of his personal obligation to pay all assessments and charges falling due during the time when he is the owner of such property. The Association may at any time, either before or after the mortgaging of any Lot, waive, relinquish or quitclaim in whole or in part the right of the Association to assessments and other charges collectible by the Association with respect to such property coming due during the period while such property is or may be held by a mortgagee or mortgagees pursuant to such sale or transfer.

## ARTICLE VI

### USE OF FUNDS

**SECTION 6.1 Use of Funds.** The Association shall apply all funds received by it pursuant to these restrictions, and from any other source, reasonably for the benefit of property owned by the Association and by Association Members and specifically to the following uses, unless other uses are approved by 51% of the votes of Members of the Association, and with the understanding that, at the Association's discretion, funds shall be applied to operations and maintenance before being applied to capital improvements: (i) repayment of principal and interest of any loans of the Association; (ii) insurance policies authorized by the Board of Directors; and, (iii) the costs and expenses of the Association for the benefit of the Property, Owners and Residents by devoting the same to the acquisition, construction, reconstruction, conduct, alteration, enlargement,

laying, renewal, replacement, repair, maintenance, operation and subsidizing of such of the following as the Board, in its discretion, may from time to time establish or provide: any or all projects, services, facilities, studies, programs, systems and properties relating to: parks and recreational facilities or services; walkways, benches, sidewalks, and landscaping; lakeside and dam maintenance; and contacts, equipment and labor for general maintenance and clean-up.

**6.2 Obligations of Association with Respect to Funds.** The Association shall not be obligated to spend in any calendar year all the sums collected in such year by way of Annual Charges or otherwise, and may carry forward as surplus any balances remaining; nor shall the Association be obligated to apply any such surpluses to the reduction of the amount of the Annual Charge in the succeeding year, but may carry forward from year to year such surplus as the Board in its absolute discretion may determine to be desirable for the greater financial security of Association and the effectuation of its purposes. The Association does not assure that the services described in Section 6.1 will be provided and nothing herein shall obligate the Association or its Directors to undertake to provide such services. The Association shall provide to all Members of the Association an annual accounting of funds expended and balances remaining within one hundred twenty (120) days after the end of any calendar year, such accounting to be at the Association's expense.

**6.3 Authority of Association to Contract.** The Association shall be entitled to contract, subject to the last sentence of Section 6.4, with any corporation, firm or other entity for the performance of the various undertakings of the Association specified in Section 6.1, and such other undertakings as may be approved by 51% of the votes of the Members of the Association, and the performance by any such entity shall be deemed the performance of the Association hereunder.

**6.4 Authority of Association to Borrow Money.** The Association shall be entitled to borrow money for the uses specified in Section 6.1, or other uses (if approved by 51% of the votes of the Members of the Association), up to any outstanding principal balance of \$10,000. Any borrowing over such amount shall require the approval of 51% of the votes of the Members of the Association. Further, the Association shall not incur outstanding contractual and debt obligations exceeding an aggregate of \$20,000 at any given point in time (not including any prospective or actual liability arising out of a lawsuit not based on unpaid accounts), without the approval of 51% of the votes of the Members of the Association.

**6.5 Authority of Association to made Capital Expenditures.** The Association shall be entitled to make capital expenditures for the uses specified in Section 6.1 or other uses as may be approved as provided therein, up to an amount not to exceed \$10,000.00, as limited by the last sentence in Section 6.4. Any capital expenditure in excess of \$10,000.00 shall require the approval of 51% of the Members of the Association.

**6.6 CPI Adjustments.** The dollar limitations in Sections 6.4 and 6.5 shall be increased effective January of each year (the "Adjustment Year"), beginning January, 1995, to reflect the percentage increase in the Revised

Consumer Price Index -- All Items and Major Group Figures for Urban Wage Earners and Clerical Workers (1982-84 = 100)(herein the "CPI") from the CPI for September, 1992 to the CPI for September of the year prior to the respective Adjustment Year.

## ARTICLE VII

### EASEMENT FOR LAKESIDE MAINTENANCE

In order to provide for a neat and orderly appearance of the lake within the Property, the Association shall have the right, through its agents, employees and contractors to enter upon the Lots: within a twenty foot (20') wide strip beginning at the intersection of Lots 30 and 31 and Emerald Lake Drive, extending southwest between Lots 30 and 31, and extending along the southern border of Lots 30 and 29 to Emerald Lake to cut grass and weed, rake leaves, repair and/or improve the dam, and perform such other level of degree of lakeside maintenance. The amount of lakeside maintenance services to be provided by the Association, if any, shall be determined by the Board of the Association; provided that this Article VII shall not be construed as imposing any obligation on the Association to perform such services. The cost of any such lakeside maintenance shall be an expense of the Association, and shall be covered by the Annual Charges set forth in Article V hereof. No member shall be entitled to any reduction of or credit on such Annual Charges due to the Member or other person performing lakeside maintenance himself instead of having the lakeside maintenance performed by the Association.

## ARTICLE VIII

### CONVEYANCE OF EASEMENTS

The Developer reserves for himself, his successors and assigns the right to use, dedicate and/or convey to the State of Alabama, to Shelby County, and/or to the appropriate utility company or companies, right-of-way or easements on, over, across, or under the ground erect, maintain and use utilities, electric and telephone poles, wires, cables, conduits, storm sewers, water mains and other suitable equipment, for the conveyance and use of electricity, telephone equipment, gas, sewer, water or other public conveniences or utilities on, in and over strips of land and over/under water and dam as required along the rear property line of each Lot and as required along each side line of each Lot.

## ARTICLE IX

### RIGHTS OF ENJOYMENT IN ASSOCIATION LAND; RESTRICTIONS ON LAKE USE

**SECTION 9.1 Association Land.** Developer may convey or cause to be conveyed to the Association, subsequent to the recordation of this Declaration, certain tracts of land within the Property, including the lake and dam, for park and other recreational and related purposes. The conveyances may restrict the uses of the property being conveyed.

**9.2 Easement of Enjoyment of Community.** The Developer and every Member, by reason of ownership of land abutting Emerald Lake, shall have a right and easement of enjoyment in and to Association Land. The Developer and every Member's easement shall be appurtenant to and shall pass with every Lot upon transfer. All Residents who are not Members shall have a non-transferable privilege to use and enjoy Association Land for as long as they are Residents within the defined meaning of that term. All such rights, easements, and privileges, however, shall be subject to the right of the Association to adopt and promulgate reasonable rules and regulations pertaining to the use of Association Land which shall enhance the preservation of such facilities, the safety and convenience of the users thereof, or which, in the discretion of the Association, shall serve to promote the best interests of the Owners and Residents. The use of the Association Lands, including the lake within the Property, shall be restricted to the Developer, Members, Residents, and guests who are accompanied by a Member or Resident. Those who are not members of Emerald Lake & Dam Association and do not own property abutting Lake Emerald may not use or enjoy Emerald Lake & Dam Association Land, including the lake and dam.

**9.3 Boats and Motors.** All boats and watercraft are prohibited on Emerald Lake.

**9.4 Boat Docks, Piers, and Landings.** All boat docks, piers, and landings which encroach into Emerald Lake are prohibited; except that nothing in this section shall apply to the right of the Developer, his heirs and assigns, in constructing and maintaining for the Developer's enjoyment on real property he retains which abuts Emerald Lake, a pier and/or gazebo.

**9.5 Swimming and Diving.** Swimming and diving are prohibited in Emerald Lake.

**9.6 Drainage of Emerald Lake.** Emerald Lake may not be drained.

**9.7 Suspension of Rights.** The Association shall have the right to suspend the right of any Member (and the privilege of each Resident claiming through such Member) to use Association Land and to receive services from the Association for any period during which the Annual Charge assessed under Article IV hereof remains overdue and unpaid, or in connection with the enforcement of any rules or regulations relating to such facilities in accordance with the provisions of the Article IX.

## **ARTICLE X**

### **MEMBERSHIP AND VOTING RIGHTS**

**SECTION 10.1 General.** The structure of the Association is contained in its Charter and by-laws. The matters discussed in Section 10.2 to 10.5 are summaries of some of the provisions of the Charter of the Association. The Charter and by-laws of the Association cover each of these matters, in addition to others, in greater detail, and should be consulted for a full explanation of the rights and obligations appurtenant to membership in the Association.

**10.2 All Lot Owners Are Members of Association.** Every owner of a Lot constituting Member's Property shall be a Member of the Association by virtue of ownership of property abutting Emerald Lake. Membership shall be appurtenant to, and may not be separated from the ownership of any property which is Member's Property.

**10.3 Voting Rights.** Each Member shall have one vote for each Lot owned by such Member. Until Developer has conveyed a majority of Lots within Emerald Lake & Dam, Members shall not elect any of the Directors of the Association. After Developer has conveyed a majority of Lots within Emerald Lake & Dam, Members shall elect a majority of the Board.

**10.4 Additions to Membership.** Any owner of a platted Lot which abuts Emerald Lake and conveyed by the Developer may become a member of the Association by executing an appropriate instrument subjecting such lot to this Declaration, and upon the recording of such instrument in the Probate Office of Shelby County, Alabama, such lot shall be subject to the provisions hereof, and such owner shall be a member of the Association.

**10.5 Conflict.** In the event of a conflict between the terms of this Declaration and the Charter of the Association, the terms of the Charter shall control.

## ARTICLE XI

### SUBMISSION OF ADDITIONAL REAL PROPERTY; DEVELOPER'S EASEMENT AND RIGHT TO ENJOY ASSOCIATION PROPERTY

**SECTION 11.1 Submission of Additional Real Property.** Developer may at any time during the pendency of this Declaration add any additional real property, now or hereafter acquired by Developer, to the Property which is covered by this Declaration provided such real property abuts Lake Emerald. Additional real property may be submitted to the provisions of this Declaration by an instrument executed by Developer, his heirs, successors, or assigns in the manner required for the execution of deeds. Such instrument shall: (i) refer to this Declaration stating the book or books of the records of Shelby County, Alabama, and the page numbers where this Declaration is recorded; (ii) contain a statement that such real property is subjected to the provisions of the Declaration; (iii) contain an exact description of such additional real property; and (iv) such other or different covenants, conditions and restrictions as Developer shall, in its discretion, specify to regulate and control the use, occupancy and improvement of such additional real property. Upon the recording of such instrument in the appropriate Probate Office of Shelby County, Alabama, such additional real property shall be deemed part of the Property and the owner or owners of any Lots on said additional real property shall thereupon be members of the Association.

**11.2 Developer's Easement.** The Developer, his successors heirs, and assigns, as owner(s) of real property abutting Emerald Lake, shall have a right and easement of enjoyment in and to Association Land, including the lake and dam.

## ARTICLE XII

### GENERAL

**SECTION 12.1 Grantee's Acceptance.** The grantee of any Lot subject to the coverage of these Restrictions, by acceptance of the deed or other instrument conveying an interest in or title to, or the execution of a contract for the purchase thereof, shall accept such deed or other contract upon and subject to each and all of these Restrictions herein contained.

**12.2 Indemnity For Damages.** Each and every Lot Owner and future Lot Owner, in accepting a deed or contract for any Lot subject to these Restrictions, agrees to indemnify the Association for any damage caused by such Owner, or the contractor, agent, or employees of such Owner, to roads, streets, gutters, or walkways, including all surfacing thereon, or to water, drainage or storm sewer lines or sanitary sewer lines, or to parks and improvements thereon, benches, and street lights, or other such property owned by the Association, or for which the Association has responsibility, at the time of such damage.

**12.3 Severability.** Every one of the provisions and restrictions is hereby declared to be independent of, and severable from the rest of the provisions and restrictions and of and from every other one of the provisions and restrictions and of and from every combination of the provisions and restrictions in this Declaration shall in no way affect any of the other provisions or restrictions which shall remain in full force and effect.

**12.4 Captions.** The captions preceding the various sections, paragraphs and subparagraphs of these Restrictions are for convenience of reference only, and none of them shall be used as an aid to the construction of any provisions of the restrictions. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

**12.5 Effect of Violation on Mortgage Lien.** No violation of any of these Restrictions shall defeat or render invalid the lien of any mortgage made in good faith and for value upon any portion of the Property; provided, however, that any mortgagee in actual possession, or any purchaser at any portion of the Property.

**12.6 No Reverter.** No Restriction herein is intended to be, or shall be construed as, a condition subsequent or as creating a possibility of reverter.

**12.7 Duration and Amendment.** The Restrictions contained in this Declaration shall run with and bind the Property, shall inure to the benefit of and shall be enforceable by the Developer, the Association and the Owner of any Lot or other parcel included in the Property, their respective legal representatives, heirs, successors and assigns until the 31st day of December in the year 2012, after which time said Restrictions shall be automatically extended for successive periods of ten years. This Declaration may not be amended in any respect except by the execution of an instrument signed by not less than 67% of the Lot Owners, which instrument shall be filed for recording among the Land

Records of Shelby County, Alabama, or in such other place of recording as may be appropriate at the time of the execution of such instrument. After December 31, 2012, this Declaration may be amended and/or terminated in its entirety by an instrument signed by not less than 55% of the Lot Owners which instrument shall be filed for recording among the Land Records of Shelby County, Alabama, or in such other place of recording as may be appropriate at the time of the execution of such instrument.

**12.8 Enforcement.** In the event of a violation or breach of any of these Restrictions or any amendments thereto by any Lot Owner, or employee, agent, or lessee of such Owner, or by any Resident, then the Owner(s) of Lot(s), the Association, or the Developer, their heirs, successors and assigns, or any party to whose benefit these Restrictions inure shall have the right to proceed at law or in equity to compel compliance with the terms and conditions hereof, to prevent the violation or breach of said Restrictions, to sue for and recover damages or other dues, or take all such courses of action at the same time, or such other legal remedy it may deem appropriate. No delay or failure on the part of an aggrieved party to initiate an available remedy set forth herein shall be held to him upon the recurrence or continuation of said violation or the occurrence of a different violation.

Damages shall not be deemed adequate compensation for any breach or violation of any provision hereof, but any person or entity entitled to enforce any provision hereof shall be entitled specifically to relief by way of injunction as well as any other available relief either at law or in equity.

Any party to a proceeding who succeeds in enforcing a Restriction or enjoining the violation of a Restriction against an Owner may be awarded a reasonable attorney's fee against such Owner.

**12.9 Certificate of Violation.** In addition to any other rights or remedies available to the Association hereunder or at law or equity, the Developer, Association, and all Lot Owners shall have the right to file in the Records of Shelby County, Alabama, a Certificate or Notice of Violation of these Restrictions (which violation shall include, without limitation, nonpayment of the Annual Charges and/or failure to comply with architectural guidelines) upon failure of a Lot Owner to correct a violation of these Restrictions within thirty (30) days after written notice of the violation has been given by the Association to the Lot Owner.

**12.10 Interpretation by Association.** The Association shall have the right to construe and interpret the provisions of this Declaration, and in absence of an adjudication by a court of competent jurisdiction to the contrary, its construction or interpretation shall be final and binding as to all persons or property benefited or bound by the provisions hereof.

**12.11 No Waiver.** The failure of any party entitled to enforce any of these Restrictions herein contained shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to such a violation or breach occurring prior or subsequent thereto.

IN WITNESS WHEREOF, the Declaration of Protective Covenants of Emerald Lake & Dam has been executed by Stephen H. Lee, effective the 7<sup>th</sup> day of December, 1994.

STEPHEN H. LEE

By: Stephen H. Lee

STATE OF ALABAMA

COUNTY OF SHELBY

I, Sharon Ware, a notary public in and for said County in said State, hereby certify that Stephen H. Lee's 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 such instrument, he executed the same voluntarily.

Given under my hand and official seal this 7<sup>th</sup> day of December, 1994.

Sharon Ware  
Notary Public

My Commission Expires: 9-13-95

THIS INSTRUMENT PREPARED BY:  
Courtney Mason & Associates, P.C.  
P.O. Box 360187  
Birmingham, Alabama 35236

Inst # 1994-36306

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