

STATE OF ALABAMA)

COUNTY OF SHELBY)

**FIRST AMENDMENT TO
DECLARATION OF EASEMENTS, PROTECTIVE COVENANTS
AND RESTRICTIONS**

FOR

LAKE PROVIDENCE
a Residential Subdivision

THIS FIRST AMENDMENT TO DECLARATION OF EASEMENTS, PROTECTIVE COVENANTS, AND RESTRICTIONS (this "First Amendment") is made as of this 28th day of October, 1998, by **LAKE PROVIDENCE, L.L.C.**, an Alabama limited liability company (the "Developer"), **ALAN BLAIR MARSH and LILLIAN WILEY MARSH**, their heirs, administrators, successors or assigns (jointly and severally hereinafter referred to as "Marsh") and **LAKE PROVIDENCE HOMEOWNERS' ASSOCIATION, INC.**, an Alabama nonprofit corporation (the "Association"), who jointly and severally declare that the real property situated in Shelby County, Alabama and described on Exhibit A attached hereto and incorporated herein by this reference is and shall be divided, developed, held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges, liens, delegations of rights, powers-of-attorney and duties hereinafter set forth (sometimes hereinafter referred to as the "Protective Covenants") and further jointly and severally declare and agree that the Declaration (as hereinafter defined) is and shall be modified and amended by the terms of this First Amendment.

WITNESSETH:

WHEREAS, the Developer and the Association executed that certain Declaration of Easements, Protective Covenants and Restrictions for Lake Providence, a Residential Subdivision dated as of August 12, 1998 and recorded in the records of the Probate Court of Shelby County, Alabama on August 12, 1998 as Instrument No. 1998-31129 (the "Declaration");

WHEREAS, upon obtaining the unanimous consent of the Members of Developer and the unanimous consent of the Members of the Association, the Developer executed that certain Release From Declaration of Restrictive Covenants dated as of August 12, 1998 and recorded in the records of the Probate Court of Shelby County, Alabama on August 24, 1998 as Instrument No. 1998-32964 (the "Partial Release");

WHEREAS, the Partial Release released from the effect of the Declaration a portion of the Property described in the Declaration;

11/06/1998-44047
01:57 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
38.50

Inst # 1998-44047

WHEREAS, the Developer and the Association desire to amend the Declaration, as amended by the Partial Release;

WHEREAS, the Declaration provides that, upon the vote of a Super-Majority of the Members of the Association the Declaration may be amended;

WHEREAS, the Marsh's own that certain real property described on Exhibit A hereto (the "Adjacent Property No.1") free and clear of any lien or encumbrance;

WHEREAS, the Marsh's desire to submit the Adjacent Property No.1 to the easements, restrictions, covenants, requirements, obligations, terms and conditions of the Declaration as hereby amended;

WHEREAS, the Marsh's desire to acquire the right to use the Common Areas;

WHEREAS, the Developer and the Association, with the unanimous consent of the Members of the Developer and the Members of the Association desire to permit the Marsh's to acquire the right to use the Common Areas;

WHEREAS, the Developer, Marsh and the Association each desire that the Property, the Adjacent Property No. 1 and the relationships of the Marsh's and the Owners with one another be consistent with the Holy Bible as the inspired word of God and toward that end wishes to remind the Marsh's and the Owners of the words of Jesus Christ as recorded in Matthew 22:36-40 (NIV):

"Teacher, which is the greatest commandment in the Law?"

Jesus replied: " 'Love the Lord your God with all your heart and with all your soul and with all your mind.' And the second is like it: ' Love your neighbors yourself.' All the Law and the Prophets hang on these two commandments."

WHEREAS, each capitalized term herein, unless otherwise specifically defined where used, shall have the meaning ascribed thereto in Article I of the Declaration.

NOW, THEREFORE, Developer, the Association and the Marsh's do hereby declare that the Adjacent Property No. 1 and the Property shall be held, developed, improved, transferred, sold, conveyed, occupied and used subject to the following covenants, restrictions, easements, charges, liens, delegations of rights, powers-of-attorney, duties and regulations, which shall be binding upon and inure to the benefit of all parties acquiring or having any right, title or interest in any portion of the Property.

1. **Recitals.** The recitals hereinabove set forth are hereby incorporated by this reference herein.

2. **Consideration.** In consideration for the Developer and the Association entering into this Agreement, the Marsh's hereby agree to pay \$69,547.39 to the Developer and \$1.00 to the Association upon their respective execution of this document.

3. **Amendment Extension and Renewal.** Developer, Association and the Marsh's hereby agree that this First Amendment is executed in extension and renewal of the Declaration and where the terms of the Declaration and this First Amendment conflict, the terms of this First Amendment shall control.

4. **Representations and Warranties of Developer and Association.** The Developer and the Association do hereby represent and warrant that the Members of the Developer and the Members of the Association, which constitute all of the Owners of all Lots, except for Owner of the portion of Lot 10 which has been released pursuant to the Partial Release, have unanimously consented and agreed to all of the provisions of this First Amendment and have directed the Managing Members of the Developer and the officers of the Association to execute this First Amendment.

5. **Representations and Warranties of the Marsh's.** The Marsh's do hereby represent and warrant that they own the Adjacent Property No. 1 free and clear of all mortgages, easements, restrictions, covenants or encumbrances of any kind and that they have full authority and right to cause the Adjacent Property No. 1 to be and become subject to the Declaration.

6. **Adjacent Property No. 1.** The Marsh's hereby declare, covenant and agree that Adjacent Property No. 1 is and shall be held, developed, improved, transferred, sold, conveyed, occupied and used subject to all of the covenants, restrictions, easements, charges, liens, Common Area Assessments, other assessments, delegations of rights, powers-of-attorney, duties and regulations as contained in the Declaration, as the same may be amended from time to time, all of which shall be binding upon and inure to the benefit of all parties acquiring or having any right, title or interest in any portion of the Property or the Adjacent Property No. 1.

7. **Amendment to Article I of Declaration.** Article I of the is hereby amended as follows:

(a) The Marsh's, their heirs, administrators, successors and assigns shall be included within the definition of "Owner" and "Lot Owner" as contained in the Declaration.

(b) Adjacent Property No. 1 shall be included within the definition of "Property" as contained in the Declaration.

(c) Adjacent Property No 1 shall be a "Lot" as that term is defined in the Declaration.

(d) Article 1.4 is hereby deleted and the following new Article 1.4 is inserted in

lieu therefor:

1.4 Assessment. The term "Assessment" shall mean the monetary charges to be assessed against the Owners of Lots pursuant to the authority vested in the Association and such term shall include Common Area Assessments and individual assessments where no distinction is required. The Assessment shall be divided as provided in Article VIII herein. For the purposes of allocating the Assessment, Lot 10 shall be deemed to be comprised of three assessable Lots and Adjacent Property No. 1 shall be deemed to be two assessable Lots.

8. **Amendment to Article 8.3 of Declaration.** Article 8.3 of the Declaration is hereby deleted and the following new Article 8.3 is inserted in lieu thereof:

8.3 Assessments. Each Owner of a Lot, by acceptance of a deed or other instrument conveying any interest therein, regardless of whether such deed or instrument contains a reference to this Declaration, is hereby deemed to covenant and agree to pay to the Association annual Common Area Assessments and individual assessments against any particular Lot which are established or assessed pursuant to the terms of this Declaration. Each Owner shall be personally liable for the payment of all Assessments coming due while he is the Owner of a Lot. All Assessments, together with late charges, court costs and attorneys' fees incurred with respect thereto by the Association, shall also be a personal obligation of the person(s) who was the Owner of the Lot at the time such Assessments and other costs and charges were assessed or incurred. Common Area Assessments shall be paid by the Owners in such manner as may be designated by the Officers quarterly, in advance, commencing at such time as the Officers of the Association deem appropriate. The amount of such Common Area Assessments shall be determined by the Officers annually as follows:

The Officers shall determine an annual operating budget in October, based upon a projected budget for the succeeding calendar year. Except as hereinafter provided, each Owner shall then be assessed a Common Area Assessment or special assessment equal to the annual operating budget multiplied by the quotient of One divided by the total number of Lots subject to this Declaration, but counting Lot 10 as three Lots and Adjacent Property No. 1 as two Lots. Hence, at the time of recordation of the First Amendment to the Declaration each Owner (other than the Owner of Lot 10 and the Owner of Adjacent Property No. 1) will pay a Common Area Assessment equal to One Fourteenth (1/14) of the cost of such operating budget. Notwithstanding the foregoing, until Lot 10 is subdivided, the Owner of Lot 10 shall be assessed an Assessment equal to three times the Assessment assessed other Lot Owners. If Lot 10 is subdivided, the provisions of Article XII hereof shall govern payment of Assessments with respect to Lot 10. Further notwithstanding the foregoing, the Owner of Adjacent Property No. 1 shall be assessed an Assessment equal to two times the Assessment assessed other Lot Owners. Assessments shall be determined annually in this manner.

All Assessments shall be payable in advance and in all events without offset, diminution or abatement by reason of fire or other casualty or any taking as a result of, in lieu of or in anticipation of the exercise of the right of eminent domain, condemnation or by private purchase in lieu thereof with respect to any Lot, Dwelling, Common Area, Lake, or any other portion of the Development or any other cause or reason of any nature. In the event that Assessments approved by the Officers are not sufficient to pay local property taxes and related taxes on the Property, the Officers shall have the right, but not the obligation, to require the Members to pay additional Assessments in an amount necessary to fund the payment of the aforesaid taxes.

9. **Maintenance of Driveway.** Notwithstanding anything to the contrary in this First Amendment or in the Declaration, the Association hereby agrees to maintain a portion of the Marsh's driveway to the same extent as it is obligated to maintain the Common Drives. The portion of the Marsh's driveway which the Association shall have the obligation to maintain shall be the first one thousand one hundred fourteen (1,114) feet of roadway, which begins where the Common Drive which serves Lot 10 divides to serve both Lot 10 and the Adjacent Property and ends 1,114 feet later. A portion of said driveway is located on Lot 10 and a portion on the Adjacent Property.

10. **Legal Expenses.** In addition to the rights and remedies set forth hereinabove, in the event either the Officers, or the Association, through their respective agents and representatives, undertake any legal or equitable action which any of them deem necessary to remedy any violation of this First Amendment, then all costs and expenses incurred by any of them, including, without limitation, attorneys' fees and court costs, shall be paid for by the Owner against whom such action was initiated.

11. **Severability.** If any provision of this First Amendment or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this First Amendment or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each provision shall be valid and enforceable to the fullest extent permitted by law.

12. **Captions and Headings.** The captions and headings contained in this First Amendment are for convenience of reference only and shall not be used in the construction or interpretation of any provisions of this First Amendment. The table of contents, cover page and any index to this Declaration are for convenience of reference only and shall not define or limit any of the terms and provisions hereof.

13. **Pronouns and Plurals.** All personal pronouns used in this First Amendment, whether used in the masculine, feminine or neuter gender, shall include all other genders. The use of the singular tense shall include the plural and the use of the plural shall include the singular.

14. **Binding Effect.** The terms and provisions of this First Amendment shall be binding upon each Owner, Occupant and Mortgagee and the respective heirs, executors, administrators,

personal representatives, successors and assigns of each Owner, Occupant and Mortgagee, and shall inure to the benefit of the Association and its Members, all of the Owners and their respective Mortgagees and their respective heirs, executors, administrators, personal representatives, successors and assigns.

15. **Conflict or Ambiguity.** In the event of any conflict or ambiguity in the terms and provisions of this First Amendment, the general rules of construction against one party as a result of that party having drafted this First Amendment are hereby waived by each Owner and, to the fullest extent allowed by law, no conflicts or ambiguity shall be resolved in favor or to the advantage of one party as opposed to another in interpreting any ambiguity or conflict contained herein.

16. **No Reverter.** No restriction or provision hereof is intended to be or shall be construed as a condition subsequent or a possibility of reverter in favor of Developer nor shall any provision be deemed to vest any reversionary interest in Developer.

17. **Interpretation.** In all cases, the provisions set forth and provided for in this First Amendment shall be construed together and give that interpretation or construction which, in the opinion of the Officers, will best effect the intent of the general plan of development for the Property. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication so as to make them fully effective. The provisions of this First Amendment shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive. The effective date of this First Amendment shall be the date hereof. This First Amendment shall be construed under and in accordance with the laws of the State of Alabama.

18. **Rights of Third Parties.** This First Amendment shall be recorded for the benefit of the Association and its Members, the Owners and their respective Mortgagees and by such recording, no other adjoining property owner or third party shall have any right, title or interest whatsoever in the Development of its operation and continuation, in the enforcement of any of the provisions of this First Amendment or the right to consent to or approve any amendment or modification to this First Amendment.

19. **No Trespass.** Whenever the Association, the Officers and their respective agents, employees, representatives, successors and assigns, are permitted by this First Amendment to enter upon or correct, repair, clean, maintain or preserve or do any other action within any portion of a Lot or Dwelling, the entering thereon and the taking of such action shall not be deemed a trespass.

20. **No Partition.** Each Owner hereby waives any right to seek or obtain judicial partition of any portion of the common area.

21. **Standards for Review.** Whenever in this First Amendment the Association or the Officers has the right to approve, consent to, or require any action be taken pursuant to the terms hereof, such approval, consent or required action shall, except as otherwise specifically provided

herein to the contrary, be given or withheld in the sole and absolute discretion of the Association or the Officers, as the case may be.

22. **Oral Statements.** Oral statements or representations by the Association, the Officers or any of their respective employees, agents, representatives, successors or assigns, shall not be binding on the Association or the Officers.

23. **Further Assurances.** Each Owner covenants and agrees to execute, sign and deliver, or cause to be executed, signed and delivered and to otherwise do or make, or cause to be done and made, any and all agreements, instruments, papers, deeds, acts or things, supplemental, conformity or otherwise, which may be reasonably requested by Developer, the Association or the Officers for the purpose of or in connection with clarifying, amending or otherwise consummating any of the transactions and matters herein.

24. **No Waiver.** All rights, remedies and privileges granted to the Association and the Officers pursuant to the terms and provisions of this First Amendment shall be deemed to be cumulative and the exercise of any one or more of such rights, remedies or privileges shall not be deemed to constitute an election of remedies nor shall it preclude the party exercising the same, or any other party, from pursuing such other and/or additional rights, remedies or privileges as may be available to such party at law or in equity. The failure at any time to enforce any covenant or restriction set forth herein shall in no event be deemed a waiver of the right thereafter to enforce such covenant or restriction.

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

26. **Dispute Resolution.** The Lot Owners are Christians and believe that the Bible commands them to make every effort to live at peace and resolve disputes with each other in private or within the Christian church (see Matthew 18:15-20; I Cor. 6:1-8). Therefore, any claim or dispute arising from or related to the formation, maintenance or existence of the Development, including those based on statute, shall be settled by biblically based mediation and, if necessary, legally binding arbitration in accordance with the Rules of Procedure for Christian Conciliation of the Institute for Christian Conciliation; judgement upon an arbitration award may be entered in any court otherwise having jurisdiction. These methods shall be the sole remedy for resolving any controversy or claim arising out of the Development, the Association or its activities and by acceptance of a deed for any Lot, each Owner expressly waives his or her right to file any legal action in any civil court or agency against one another for such disputes, except to enforce an arbitration decision.

[The remainder of this page is intentionally blank.]

IN WITNESS WHEREOF, Developer and the Association have each caused this First Amendment to be executed by their duly authorized members or officers, as the case may be, as of the day and year first above written.

DEVELOPER:

LAKE PROVIDENCE, L.L.C.,
an Alabama limited liability company

By: 
Mark A. Wesson
Its Managing Member

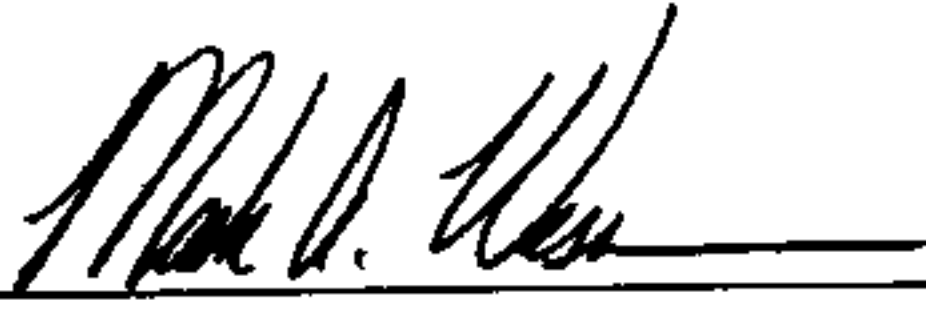
and

By: 
Glenn G. Waddell
Its Managing Member

ASSOCIATION:

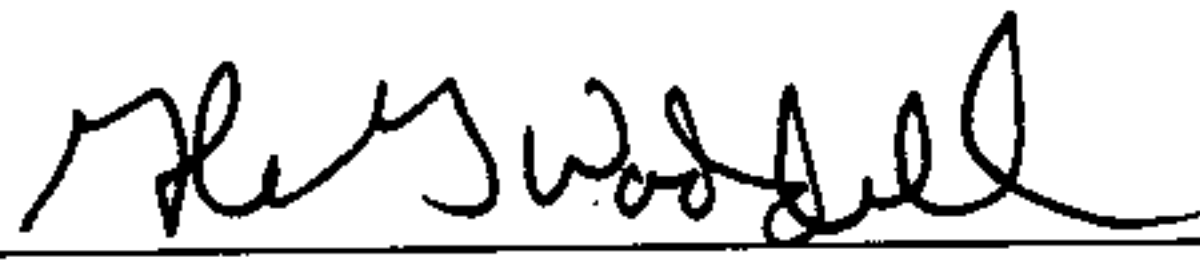
**LAKE PROVIDENCE HOMEOWNERS'
ASSOCIATION, INC.**

an Alabama non-profit corporation

By: 

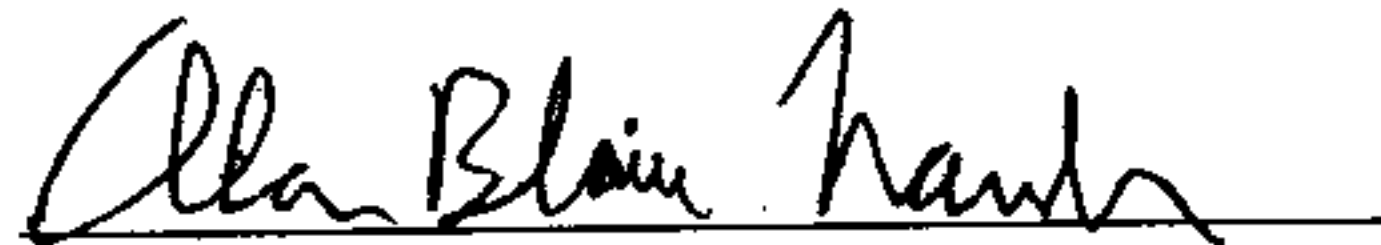
Mark A. Wesson
Its President

and

By: 

Glenn G. Waddell
Its Secretary

MARSH'S:



Alan Blair Marsh



Lillian Wiley Marsh

STATE OF ALABAMA)

COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Mark A. Wesson, whose name as Managing Member of Lake Providence, L.L.C., an Alabama limited liability company, is signed to the foregoing First Amendment, and who is known to me, acknowledged before me on this day, that being informed of the contents thereof, he, as such Managing Member and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and official seal, this the 28 day of October, 1998.

Julie Higginbotham
Notary Public

My Commission Expires: 11/12/01

STATE OF ALABAMA)

COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Glenn G. Waddell, whose name as Managing Member of Lake Providence, L.L.C., an Alabama limited liability company, is signed to the foregoing First Amendment, and who is known to me, acknowledged before me on this day, that being informed of the contents thereof, he, as such Managing Member and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and official seal, this the 29 day of October, 1998.

Julie Higginbotham
Notary Public

My Commission Expires: 11/12/01

STATE OF ALABAMA)

COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Mark A. Wesson, whose name as President of Lake Providence Homeowners' Association, Inc., a corporation, is signed to the foregoing First Amendment, and who is known to me, acknowledged before me on this day, that being informed of the contents thereof, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal, this the 28 day of October, 1998.

Julie Higginbotham
Notary Public

My Commission Expires: 11/12/01

STATE OF ALABAMA)

COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Glenn G. Waddell, whose name as Secretary of Lake Providence Homeowners' Association, Inc., a corporation, is signed to the foregoing First Amendment, and who is known to me, acknowledged before me on this day, that being informed of the contents thereof, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal, this the 29 day of October, 1998.

Julie Higginbotham
Notary Public

My Commission Expires: 11/12/01

STATE OF ALABAMA)

COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County, in said State, do hereby certify that Alan Blair Marsh, an individual 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 said instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the 28 day of October, 1998.

Julie Higginbotham
Notary Public

My Commission Expires: 11/12/01

STATE OF ALABAMA)

COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County, in said State, do hereby certify that Lillian Wiley Marsh, an individual 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 said instrument, she executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the 28 day of October, 1998.

Julie Higginbotham
Notary Public

My Commission Expires: 11/12/01

EXHIBIT "A"

Commence at a pine knot in place accepted as the Northwest corner of the Northeast one-fourth of the Northeast one-fourth of Section 7, Township 18 South, Range 1 East, Shelby County, Alabama; thence proceed South $46^{\circ} 05' 45''$ West for a distance of 1099.26 feet to the point of beginning. From this beginning point continue South $46^{\circ} 05' 45''$ West for a distance of 773.70 feet; thence proceed South $01^{\circ} 27' 36''$ West for a distance of 436.64 feet to a $\frac{1}{2}$ " rebar in place; thence proceed South $88^{\circ} 32' 24''$ East for a distance of 1061.32 feet; thence proceed North $46^{\circ} 05' 45''$ East for a distance of 1205.44 feet; thence proceed North $50^{\circ} 22' 04''$ West for a distance of 30.19 feet; thence proceed South $46^{\circ} 05' 45''$ West for a distance of 721.40 feet; thence proceed South $87^{\circ} 51' 50''$ West for a distance of 37.29 feet; thence proceed North $50^{\circ} 22' 04''$ West for a distance of 1013.60 feet to the point of beginning.

The above described land is located in the Northeast one-fourth of the Northeast one-fourth of Section 7, Township 18 South, Range 1 East, Shelby County, Alabama, and contains 20.87 acres.

Inst # 1998-44047

11/06/1998-44047
01:57 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
013 MEL 38.50