

STATE OF ALABAMA )  
COUNTY OF SHELBY )

Inst # 2001-54469

**DECLARATION OF RESTRICTIVE COVENANTS FOR  
TIMBERLINE**

**KNOW ALL MEN BY THESE PRESENTS:** That:

12/12/2001-54469  
11:58 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
016 MEL 56.00

**WHEREAS**, Timberline Development, LLC, ("the Developer") has heretofore acquired fee simple title to certain real property situated in Shelby County, Alabama and has subdivided such property (the Subdivision) into Eighty-two (82) Lots (herein "Lots") as described in map and survey of TIMBERLINE, Phase 2, as recorded in Map Book 29, Page 49, in the Probate Office at Shelby County, Alabama (herein the "Record Map" or the "Property").

**WHEREAS**, the Developer desires to develop a single family residential subdivision to be known as TIMBERLINE and in doing so to subject the Property to the restrictions and covenants set forth in this Declaration of Restrictive Covenants for TIMBERLINE (herein "the Declaration"); and

**WHEREAS**, Timberline Golf Club, LLC, which is an affiliate of the Developer, is also constructing a golf course and related facilities (the Golf Club Property) which Golf Club Property is contiguous to and abuts the Subdivision as shown on the Record Map; and

**WHEREAS**, the Developer desires to subject each Lot owner as herein defined to membership in Timberline Homeowners Association, Inc. (the "Association").

**NOW THEREFORE**, the Developer does, upon recording hereof, declare and make the Property and each of the Lots now or hereafter included in the Subdivision of the Property subject to the covenants, conditions, restrictions, uses, easements, limitations and affirmative obligations set forth in this Declaration and as shown on the Record Map, all of which are declared to be in furtherance of a plan for the improvement of the Property in a desirable and uniform manner, and all of which shall run with the land and shall be binding on all persons, firms or corporations having or acquiring any right, title or interest in the Property, the Lots, or any part(s) thereof, and shall be for the benefit of each such

- Owner of Property or interest therein, and shall inure to the benefit of and be binding upon each successor in interest to the Owners thereof.

## **ARTICLE I**

### **LAND USE**

The Property will be used for residential purposes only and not for any business or trade. Home offices are allowed, however, such allowance is intended only to allow individual work at a structure located on a Lot, but not the conduct of business with the presence of the general public at the Property.

**DEFINITIONS.** For the purpose of this Declaration, the following terms shall have the following meanings:

- a. Primary Dwelling means a residential structure for habitation by no more than one family.
- b. Road means Timberline Trail, Timberline Lane or Timberline Circle.
- c. Road Lot Line means the border of any Lot within the Subdivision which touches a Road right-of-way.
- d. Timberline Design Guidelines means the design criteria is from time to time promulgated by the Developer and which is on file in the office of the developer or the architectural control committee.

## **ARTICLE II**

### **BUILDING REQUIREMENTS**

- (a) **MINIMUM STRUCTURE SIZE OF PRIMARY DWELLING.** No Lot shall contain more than one Primary Dwelling and no Primary Dwelling shall be erected on any Lot if such dwelling contains less than 2200 square feet of Living Space for a single story dwelling, not less than 2400 square feet of total Living Space for a 1½ story dwelling (with not less than 1800 square feet of Living Space on the first floor of a 1½ story dwelling) and not less than a total of 2600 square feet of Living Space for a two story Dwelling. There shall be no split foyer Dwellings. Living Space is defined as heated and finished areas and does not include porches, garages, basements, carports or attics.
- (b) **EXTERIOR MATERIAL.** No Primary Dwelling shall use the following materials which shall be visible on the exterior of any such building: (a) concrete block; or (b) stucco over concrete block.

- (c) **DRIVEWAYS.** All driveways servicing any Lot shall be concrete or any other surface which has been approved in writing by the Architectural Review Committee (as hereinafter defined).
- (d) **BUILDING LOCATION.** Subject to subparagraph (w) of this Article II, no structure, other than fences, shall be located any closer than 35 feet from Timberline Trail, Timberline Lane and Timberline Circle (the Roads) nor shall any structure other than fences be located any closer than 15 feet from any non Road Lot Line.
- (e) **FENCING.** The ARC (as hereinafter defined) shall have the right to approve any proposed fencing and the materials and location of such fencing. There shall be no chain link fencing. All proposed fencing must be submitted to the ARC for approval, prior to placing the same on a Lot.
- (f) **TEMPORARY STRUCTURES AND OUTBUILDINGS.** No mobile homes or temporary dwellings shall be built and used on a Lot for residential purposes. Guest houses and other out buildings shall, subject to the approval of the ARC, be allowed.
- (g) **DESIGN CRITERIA.** The objective of the Architectural Review Committee (the ARC) hereinafter established is to provide for the quality development of all of the Lots within the subdivision.
- (h). **SEWER.** The Developer shall have no responsibility for the payment of sewer tap fees. The Owner of each Lot shall be responsible to acquire and pay for sewer taps for each Lot and any expenses incurred therewith including, without limitation, expenses associated with sewer serving any Lot that is not gravity fed.
- (i) **WINDOWS.** Only wood or metal clad windows are permitted or others that are approved by the ARC.
- (j) **THE ROOF.** Pitch on any Primary Dwelling shall not be less than 8 and 12 unless first approved in writing by the Architectural Review Committee. All roof vents and pipes shall be painted as near the color of the roof as possible, and shall be located on the rear of the structure and not be viewed from the street. All roofs shall be of weathered wood color.
- (k) **ALL** Primary Dwellings will have brick, stone or dryvit type product on all four sides of the foundation, no exposed block. All Primary Dwellings are to be of traditional styling and approved in writing by the Architectural Review Committee.
- (l) No residence shall have an open carport or front drive unless specifically approved in writing by the ARC.
- (m) **NO CANTILEVERED CHIMNEY SHALL BE ALLOWED ON THE FRONT OR SIDES OF ANY STRUCTURE.** All chimney chases on the front and side shall be supported by the



foundation of the structure and shall be constructed of the same material as used in the foundation. Cantilevered chimney chases may be allowed on the rear by specific approval of the Architectural Review Committee. Bay windows on the front or side of the dwelling must have a bottom return.

(n) **GARAGES.** Garage doors shall not be permitted on the front of Primary Dwellings. If garage doors must be located on the front of Dwellings due to terrain, the interior of the garage must be sheetrocked and painted.

(o) **CONSTRUCTION OF IMPROVEMENTS.** When the construction of any building is once begun, work thereon must be prosecuted diligently and continuously and must be completed within 12 months.

(p) **OUTBUILDINGS.** No outbuildings, storage sheds, separate garages or detached buildings of any kind shall be allowed, unless approved in writing by the ARC.

(q) **POOLS.** Swimming pools shall only be allowed if approved in writing by the Architectural Review Committee. No swimming pools shall be allowed on Golf Course Lots (as hereinafter defined)

(r) **OBSTRUCTION OF VIEW AT INTERSECTIONS.** No tree, fence, wall, hedge, shrub or planting which obstructs lines of view at elevations between two (2) and six (6) feet above the Roads shall be placed or permitted to remain on any corner Lot. Trees shall be permitted to remain provided the foliage line is kept trimmed so as to prevent obstruction of such lines of sight. For the purpose of this Declaration, the word "Roads" means any public road within the Subdivision.

(s) **LANDSCAPING.** Upon completion of the Primary Dwelling, all front and side yards which are not left in a natural state will be landscaped with solid sod. The rear yard may be sprigged, seeded or solid sod, or left in a natural state. No straw or bark shall be required in areas which are left in a natural state.

(t) **LOCATION OF AIR CONDITIONING UNITS AND VENTS.** Outside air conditioning units and plumbing and heating vents shall be placed only at the rear or at the sides of houses.

(u) **PORCHES.** All porches on the front sides of any dwelling shall be supported by the foundation of the structure of the Dwelling.

(v) **APPROVED BUILDER'S LIST.** All improvements constructed on any Lot shall be made by a builder or contractor approved by the Developer. No Owner may act as a general contractor for the construction of a Primary Dwelling or other improvement on an Owner's own Lot, except that an approved builder or contractor may build improvements on a Lot owned by such approved builder or contractor. A list of all approved builders and contractors, as amended from time to time, shall be maintained by the Developer or the Architectural Review Committee.

(w) **SETBACK AND SIDE LINE REQUIREMENTS.** All buildings built on any Lot shall comply with

the setback and side lines restriction as required upon such Lot as set forth in the most restrictive requirements of; (i) applicable governmental ordinances; (ii) the Timberline Design Guidelines; (iii) this Declaration; and (iv) the Record Map. Such setback restrictions shall be a covenant running with the land.

**(x) DRAINAGE FACILITIES.** All drainage facilities or pipes which serve more than one Lot but are not maintained by a governmental entity shall be maintained in good, operable condition by the Association, and will be charged to the Lot Owners. An easement is hereby reserved in favor of the Association over, under and across any Lot upon which any such drainage facilities or pipes are located in order to carry out the intent of this paragraph.

**(z) GOLF COURSE AND WATERFRONT LOTS.**

1. In addition to the provisions of Article II (w) above, a thirty (30) foot natural undisturbed buffer, free from any improvements of any nature shall remain and at all times be maintained on that portion of any Lot which abuts and is contiguous to the Golf Club Property and any lakes or other water features or parks within the Golf Club Property. Furthermore, in order to promote a suitable, safe and attractive open space atmosphere, no improvements of any nature (including, without limitation, fences, walls, berms, mounds, barriers, decks, terraces, patios, tennis courts, swimming pools, outdoor furniture, swing sets, outdoor recreational facilities and equipment or any other similar devices, equipment, tools or machinery, buildings or other structures), shall be constructed or allow to remain within the fifty (50) foot strip of land along the common boundary of those Lots which are adjacent to the Golf Club Property or any lakes, water features or parks within the Golf Club Property.

2. Owners and Occupants of Lots adjacent to all golf course fairways, tee areas and greens within the Golf Club Property or any lakes water features or parks within the Property, as well as their family members, guests, agents and invitees shall be obligated to refrain from any actions or activities which would distract the playing qualities on the golf course located on the Golf Club Property or which would create a nuisance. Such prohibited activities shall include, without limitation, burning materials where the smoke would cross the golf course, maintenance of dogs or other pets which interfere with golf course play due to their loud barking or odors, entrance onto the Golf Course Property, playing of loud radios, televisions, stereos or musical instruments, running or walking on the fairways, picking up golf balls or similar interference.

3. No construction trucks, equipment or machinery, including any trailers used for the transportation of construction equipment or machinery, shall be parked overnight on any streets or roads within the Property. Upon completion of construction of any improvements or any Dwelling, all

construction machinery, tools and equipment, all unused construction materials and all trash, debris and rubbish shall be immediately removed from the Lot or Dwelling and such Lot or Dwelling shall be kept and maintained in a clean and uncluttered condition.

4. All Dwellings and any other improvements shall be constructed in compliance with the Timberline Design Guidelines on file in the office of the Developer or ARC and all applicable federal, state, county and local laws, ordinances, rules, regulations and zoning and building code requirements. Each Owner shall be solely responsible for obtaining from the appropriate governmental authorities all necessary permits and licenses and otherwise paying all required fees for the construction of any improvements on such Owner's Lot. Each Owner shall also be responsible for strict compliance with the architectural standards hereinafter set out and all applicable watershed protection, soil erosion and other governmental requirements, both during and after completion of construction or any improvements on such Owner's Lot.

### **ARTICLE III**

#### **ARCHITECTURAL REVIEW COMMITTEE**

(a) **APPROVAL OF ARCHITECTURAL REVIEW COMMITTEE.** No structure, building, or fence shall be commenced, erected, placed, moved onto or permitted to remain on any Lot, nor shall any existing structure upon any Lot within the Property be altered in any way which materially changes the exterior appearance thereof until same is submitted to and approved by the Architectural Review Committee (herein "the ARC"). The ARC will be provided with such plans and specifications which will be in a form and shall contain such information, as may be required by the Architectural Review Committee and shall include but not necessarily be limited to:

1. a site plan of the Lot showing the location, height, and exterior design (including a summary of all proposed materials together with samples of exterior materials and paint colors) of all buildings and improvements proposed to be constructed on the Lot; paint colors should be earth tone. Bright colors are discouraged and will be denied;

2. A grading, and drainage plan for the Lot; and

3. Any remodeling, reconstruction, alterations or additions to an existing residence shall require the written approval of the Architectural Review Committee.

(b) **COMPOSITION OF THE COMMITTEE.** The Architectural Review Committee (the "Committee"), until termination or modified pursuant to Article III, Paragraph (j) as hereinafter set out



shall be composed of the Developer, until such time as the Developer has sold all of the Lots within the Property. At such time as the Developer has sold all of the Lots, the Committee shall be comprised of at least three (3), but not more than five (5) individuals who are Lot Owners who are elected annually by a majority of the fee simple Owners of the Lots within the Property and at such time, the affirmative vote of a majority of the members of the Committee shall be required in order to issue any permit and authorization set forth herein.

(c) **EVIDENCE OF APPROVAL.** The approval of the ARC shall be evidenced by written permit executed by one or more of the members of the ARC and counter-signed by the applicant therefor. The written permit shall be executed in duplicate with one copy to be retained by the applicant.

(d) **BASIS FOR DISAPPROVAL OF PLANS:**

1. The scope of review by the Committee shall be limited to appearance and improvement location only. The purpose of the Committee is to promote quality development on the Lots and not necessarily to impose requirements concerning the type of structure or the design of such structures in such Lots. **THE ARC DOES NOT ASSUME OR ACCEPT BY THE FILING HEREOF ANY RESPONSIBILITY OR AUTHORITY TO REVIEW FOR STRUCTURAL SOUNDNESS, COMPLIANCE WITH BUILDING OR ZONING CODES OR STANDARDS, OR ANY OTHER FACTORS.**

2. The ARC Committee shall have the right to disapprove any plans and specifications submitted for approval for any of the following reasons:

- (A) failure of such plans and specifications to comply with the covenants and restrictions herein set forth;
- (B) failure to include information in such plans and specifications as may have been reasonably requested by the ARC;
- (C) reasonable objection to the exterior design, appearance or materials proposed to be used in any proposed structure;
- (D) incompatibility of use of any proposed structure or improvement with existing structures or uses upon other Lots in the Property;
- (E) objection to the site plan, clearing plan, drainage plan for any special parcel;
- (F) failure of plans to take into consideration the particular topography, vegetative characteristics, and natural environs of the Lot; and
- (G) any other matter which, in the judgment of the Committee, would render the proposed structure, improvement, or uses inharmonious with the general plan of improvement of the

Property or with structures, improvements, or uses located upon Lots in the Property.

3. In any case where the ARC shall disapprove any plans and specifications submitted hereunder, or shall approve the same only as modified or upon specified conditions, the disapproval shall be accompanied by a statement of the grounds upon which such actions were based. If no response is made by the ARC within a thirty (30) day period after submission of such plans and specifications, it shall be deemed that such plans and specifications are approved. In any such case the ARC shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal can be prepared and submitted for approval.

(e) **RETENTION OF COPY OF PLANS.** Upon approval by the ARC, plans and specifications, as approved, shall be deposited for permanent record with the ARC, and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same.

(f) **FAILURE TO OBTAIN APPROVAL.** If any structure or improvement shall be altered, erected, placed or maintained upon any Lot, or any new structure or improvement commenced on any Lot other than in accordance with plans and specifications approved by the ARC pursuant to the provisions of this Article III, such alteration, erection, maintenance or use shall be deemed to have been undertaken in violation of this Declaration, and without the approval required herein, and upon written notice from the ARC, any such structure or improvement as altered, erected, placed or maintained shall be corrected or removed as required as to extinguish such violation. If fifteen (15) days after the notice of such violation the Owner of the Lot upon which such violation exists shall not have taken reasonable steps toward the removal or correction of the same, the Committee shall have the right, through its agents and employees, to enter upon such Lot and to take such steps as may, without constituting trespass, be necessary to extinguish the violation and the cost thereof shall be a binding, personal obligation of such owner as well as a lien (enforceable in the same manner as a mortgage) upon the Lot in question. The lien provided in this paragraph shall not be valid as against a bona fide purchaser (or bona fide mortgagee) of the Lot in question unless a suit to enforce said lien shall have been filed in a court of record in Shelby County prior to the recordation among the land records of Shelby County of the deed (or mortgage) conveying the Lot in question to such purchaser (or subjecting the same to such mortgage).

(g) **CERTIFICATE OF COMPLIANCE.** Upon completion of the construction or alteration of any structure or improvement in accordance with the plans and specifications approved by the ARC, the ARC shall, upon written request of the Owner thereof, issue a certificate of compliance in form suitable for recordation, identifying such structure or improvement as placed, and stating that the plans and specifications, the location of such structure or improvement and the use or uses to be conducted thereon



have been approved and that such structure or improvement complies with the requirements of the ARC. Preparation and recording of such certificate shall be at the expense of such Owner. Any certificate of compliance issued in accordance with the provisions of this Article III, Paragraph (g), shall be prima facie evidence of the facts therein stated, and as to any purchaser or encumbrance in good faith and for value, or as to any title insurer, such certificate shall be conclusive evidence that all structures or improvements on the Lot and the use or uses described therein comply with all the requirements of this Article III, and with all other requirements of this Article III, and with all other requirements of the Declaration as to which the Committee exercises any discretionary or interpretive powers.

**(h) INSPECTION RIGHTS.** Any agent of the Developer or the ARC may at any reasonable time or times enter upon and inspect any Lot or any improvements thereon for the purpose of ascertaining whether the maintenance of such Lot and the maintenance, construction, or alteration of structures and improvements thereon are in compliance with the provisions hereof; and neither the Developer nor the ARC nor any such agent shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection. Paragraph 7.4 "Right of Entry" of the bylaws of Timberline Homeowners Association, Inc., is hereby incorporated by reference herein.

**(i) WAIVER OF LIABILITY.** Neither the ARC nor any architect nor agent thereof, nor Owner, nor any partner, agent, or employee of any of the foregoing, shall be responsible in any way for **(i)** any failure of structures or improvements to comply with requirements of this Declaration, although a certificate of compliance has been issued; **(ii)** any defect in any plans and specifications submitted, revised, or approved in accordance with the foregoing provisions; or **(iii)** any structural or other defects in any work done according to such plans and specifications, and all persons submitting any such plans and specifications, and all persons relying thereon, agree not to sue or claim against the entities and persons referred to in this Article III for any cause arising out of the matters referred to in this Article III and further agree to and do hereby release said entities and persons for any and every such cause.

**(j) DURATION.**

1. The rights of the Developer as to the Architectural Review Committee shall terminate upon the earlier of:

**(A)** the date that the Developer has sold the last Lot it owns within the Subdivision and Property; or

**(B)** the resignation or inability of the Developer to perform on the ARC.

2. After the Developer's involvement with the ARC has ended, the Committee shall be comprised of not less than three (3) no more than five (5) people who are fee simple Lot owners and are elected by a

majority vote of the fee simple Lot Owners as provided in Subparagraph (b) or Article III.

3. Inactivity of the ARC shall not be deemed a waiver of the rights of the ARC.

#### **ARTICLE IV**

##### **RESERVATION OF EASEMENTS FOR SIGNS, WALKS, TRAILS, WALLS AND FENCES**

a) **EASEMENT FOR WALKS, TRAILS AND SIGNS.** The Developer does hereby establish and reserve and designate a permanent and perpetual easement appurtenant over, across, through and upon a strip of land on each Lot ten (10) feet in width lying parallel to and running along the common exterior boundary between each Lot and any Road which is directly adjacent to and abuts such Lot for the purpose of constructing, installing, maintaining, repairing, operating, replacing and the use of sidewalks, walkways, trails, traffic directional signs and related improvements, provided, however, that Developer shall have no obligation to construct any of the foregoing improvements. If a majority of the Lot Owners vote to construct any of the foregoing improvements that have not been constructed by the Developer, they may do so, however, no Lot Owner which has not voted affirmatively for the construction of such improvements shall be obligated to bear any expense with respect to the construction or maintenance of such improvements.

b) **EASEMENT FOR PERIMETER IMPROVEMENTS.** Developer does hereby establish and reserve and designate a permanent and perpetual easement appurtenant over, across, through and upon a strip of land fifteen (15) feet in width running parallel to and along the boundary of any Lot which constitutes the perimeter boundary of the Property for the purpose of constructing, installing, maintaining, repairing, operating and replacing a perimeter wall, fence, mound or berm (the improvements) around the perimeter boundary of the Property; provided, however, that Developer shall not have any obligation to construct any such perimeter wall, fence, mound or berm. If a majority of the Lot Owners vote to construct any of the foregoing improvements that have not been constructed by the Developer, they may do so, however, no Lot Owner which has not voted affirmatively for the construction of such improvements shall be obligated to bear any expense with respect to the construction or maintenance of such improvements.

#### **ARTICLE V**

##### **MISCELLANEOUS**

(a) **ANIMALS.** No dog kennels for commercial purposes will be allowed. No cows, swine or chickens will be allowed, and no commercial breeding of any animal will be allowed. Only domestic animals (i.e.

cats, dogs, etc.) shall be allowed. No dogs shall be allowed to run free.

(b) No obnoxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the Property, the other Lots or Lot Owners. Without limiting the generality of the foregoing, it is the intent of the Developer and these covenants to restrict the use of the Property and any Lot therein which will detract from a high quality single family residential subdivision. No boat, trailer, recreational or commercial vehicle or bus or vehicle of any kind which is not in driveable condition, shall be allowed to be parked or stored on any Lot in a location where it can be seen from a front or side street. No Lot shall be used as a dumping ground for rubbish, trash, garbage or other waste and such shall not be kept except in sanitary containers. Each Lot shall be maintained in a neat and orderly fashion at least to the extent of visibility from the Roads, which includes the yard and any shrub beds. No large satellite, microwave dishes or television or radio antennas shall be placed on any Lot unless approved in writing by the ARC, but in no event shall large satellite, microwave dishes or televisions or radio antennas be visible from the Roads. No Lot shall be cultivated for crops of any sort, except for gardens of reasonable size, which is to be located in the rear of the Primary Dwelling and out of visibility from the Roads.

(c) No signs of any kind shall be displayed to the public view on any Lot except one sign of not more than five (5) square feet advertising the Property for sale or rent, or signs used by a builder to advertise the Property during construction and sale period.

(d) During all construction, all vehicles, including those delivering supplies, must enter the building Lot on the driveway only as approved by the ARC so as not to unnecessarily damage trees and Roads. Any damage not repaired by the contractor will be repaired by the ARC (after ten (10) days written notice) and will be charged to the Lot Owner at a reasonable charge for such services, which charge shall constitute a lien upon such Lot enforceable by appropriate proceedings at law or equity. The Roads are designed for residential and light construction use only. Any damage caused by excessive dirt hauling to or from a Lot will be charged to the Lot owner. If there are any disputes as to damages, the City Engineer of Calera, Alabama shall determine any damages and the amount of such damage. During construction, all Builders must keep the homes, garages, and building site clean. All building debris, stumps, trees, etc., must be removed from each building Lot by the Builder as often as necessary to keep the house and Lot attractive. Such debris will not be dumped in any area of the Property. Best management practices shall be implemented and observed during all construction on any Lot. The City Engineer of the City of Calera will determine improvements needed if disputes arise concerning best management practices. All Lot



Owners and their contractors shall comply with the permit for the Timberline development issued by the Alabama Department of Environmental Management.

(e) No Lot shall be sold or used for the purpose of extending any public or private road, street, or alley, for the purpose of opening any road, street, or alley, except by the prior written consent of the ARC.

(f) No basketball goal or similar object may be installed nearer the Road than the front building line of the Dwelling the backboard will be clear or smoked plexiglass and the supporting structure shall be painted dark green.

(g) All mailboxes shall be of a standard design and type as determined by the ARC.

(h) No Lot in the Subdivision may be subdivided or replatted without the express written consent and approval of the ARC, 2/3 of the Lot Owners (with each Owner having 1 vote per Lot owned) and the appropriate government agency.

(i) **GRANTEE'S ACCEPTANCE.** The grantee of any Lot subject to the coverage of this Declaration, by acceptance of the deed or other instrument conveying an interest in or title to, or the execution of a contract for the purpose thereof, whether from Owner or a subsequent Owner of such Lot, shall accept such deed or other contract upon and subject to each and all of these restrictions herein contained and other easements, restrictions and reservations of record.

(j) **INDEMNITY FOR DAMAGES.** Each and every Lot Owner and future Lot Owner, in accepting a deed or contract for any Lot subject to the Declaration, agrees to indemnify the Developer and the Association for any reasonable direct damage (but not consequential damages) caused by such Owner, or the contractor, agent, or employees of such Owner, to the Roads, streets, gutters, walkways or other aspects of public ways, including all surfacing thereon or to water, drainage or storm sewer lines or sanitary sewer lines owned by the Developer, or for which Developer or the Association has responsibility, at the time of such damage.

(k) **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.

(l) **EFFECTS OF VIOLATION ON MORTGAGE LIEN.** No violation of any of this Declaration shall defeat or render invalid the lien of any mortgage made in good faith and for value upon any portion of the Property, and Lot therein; provided, however, that any mortgagee in actual possession, or any purchaser at any foreclosure sale shall be bound by and subject to this Declaration as fully as any other Owner of any portion of the Property, any Lot therein.

(m) **OWNER.** As used herein, "Owner" shall mean the record fee title owner of a Lot within the Subdivision, whether such ownership is by one or more persons or entities. Each Lot shall only have one vote relating to matters concerned by this instrument regardless of the number of owners of a Lot.

(n) **NO REVERTER.** No restriction herein is intended to be, or shall be construed as a condition subsequent or as creating a possibility of reverter.

(o) **DURATION AND AMENDMENT.** The restrictions contained in this Declaration shall run with and bind the Property and, shall inure to the benefit of and shall be enforceable by the Developer, the ARC, and the Owner of any Lot included in the Property, their respective legal representatives, heirs, successors and assigns until the 31<sup>st</sup> day of December, 2020, after which time said restrictions shall be automatically extended for successive periods for ten (10) years. This Declaration may not be amended in any respect except by the execution of an instrument shall be signed by 2/3 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, 2020, this Declaration may be amended and/or terminated in its entirety by an instrument signed by not less than a majority of the Lot Owners, which instrument shall be filed for recording among the Land Records of Shelby County, Alabama, or in such other places of recording as may be appropriate at the time of the execution of such instrument.

(p) **ENFORCEMENT.** In the event of a violation or breach of any of these restrictions or any amendments thereto by any Owner of a Lot, or employee, agent, or lessee of such Owner, the Owner(s) of Lot(s), Developer, their 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 for any amounts required to be paid hereunder, or take all such courses of action at the same time, or such legal remedy deemed appropriate. No delay or failure on the part of an aggrieved party to initiate an available remedy set forth herein shall be held to be a waiver of that party or of any other party to assert any right available to him upon the recurrence or continuation of said violation or the occurrence of different violations. 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 a Lot Owner shall be awarded a reasonable attorney's fee against such Lot Owner, and shall have the right to place a recorded lien on any Lot for the purpose of securing the payment of any amounts owing by a Lot Owner under this Declaration and such lien may be enforced in the same manner as foreclosure of a mortgage under the laws of the State of Alabama.

(q) **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 violation or breach occurring prior or subsequent thereto; provided, however, that approval of plans pursuant to Article III shall be binding on any and all parties as a conclusive determination that such plans are in conformity with these restrictions.

(r) All Lot owners shall maintain their Lot and the improvements thereon in a neat and orderly fashion. The Developer has a master permit for Timberline from the Alabama Department of Environmental Management ( ADEM). It shall be the responsibility of Lot Owners to maintain any erosion control devices on their individual Lots. If additional erosion and sedimentation control devices are needed due to construction or grading by the Lot Owner(s), it shall be the responsibility of such Lot Owner. All Lot Owners must keep their individual Lots in compliance with ADEM regulations and any other laws, ordinances or regulations as may be issued from time to time by any governmental authority having jurisdiction over the Property.

**(s) MODIFICATION OF THESE COVENANTS BY DEVELOPER.**

Notwithstanding anything to the contrary contained herein, the Developer reserves the right, until the Developer has sold all of the Lots in the Subdivision, to unilaterally modify these covenants with respect to any Lot owned by Developer at any time without the necessity of obtaining approval from any Lot Owner or Lot Mortgagee. Any such modification shall only apply to Developer Owned Lot(s).

(t) **PROPERTY SOLD AS IS WHERE IS.** By accepting a Deed or Mortgage to a Lot, such Lot Owner and/or Mortgagee acknowledges that the Developer has no further responsibility with respect to the Property or improvements located thereon, it being expressly understood that all Lots and any improvements including the Roads are sold AS IS/WHERE IS. Notwithstanding the foregoing, it shall be the responsibility of the Developer to seal with asphalt TIMBERLINE TRAIL, TIMBERLINE LANE, and TIMBERLINE CIRCLE. As used in these covenants, the words "Road" or "Roads" also means TIMBERLINE TRAIL, TIMBERLINE LANE, and TIMBERLINE CIRCLE, as shown on the Record Map.

(u) **ARBITRATION.** Any controversy or claim between a Lot Owner and the Developer, which may properly be submitted to arbitration, shall be settled under common law arbitration by arbitration in



accordance with the rules of the American Arbitration Association, and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Each party to such claim or controversy shall appoint one person as an arbitrator to hear and determine the dispute and if the two (2) so chosen shall be unable to agree, then the two arbitrators shall choose a third arbitrator, whose decision shall be final and conclusive upon the parties hereto. The expenses of such arbitration shall be borne by the losing party or in such proportion as the arbitrator(s) shall decide. The successful party shall recover as expenses and costs all reasonable attorney's fees incurred by him in connection with the arbitration proceeding or any appeals therefrom. In the event any such controversy or claim is not properly submissible to arbitration, the Lot Owner having such claim or controversy with the Developer, irrevocably waives all right to trial by jury in any court in any such action.

(v) **NOTICES.** Any notice to be given under these covenants shall be in writing and be sent by certified mail, return receipt requested and shall be effective if given to the Lot Owner to whom such notice is directed at either; (1). The address provided by such Lot Owner to the Developer or the ARC; or (2). At the address maintained by the Tax Collector of Shelby County, Alabama for such Lot Owner (herein the "Authorized Address"). Mailing, postage prepaid, by certified mail, to the Authorized Address shall conclusively mean receipt by the Lot Owner to whom such notice is intended.

(w) Regions Bank, being the Developer's Mortgagee, has executed these Covenants in order to indicate that the Mortgage it holds on the Property is subject to and subordinate to these Covenants.

(x) **TOPOGRAPHY AND VEGETATION.** In order to protect the natural beauty of the vegetation and topography of the woodlands and other areas within the Subdivision, written approval of the ARC is hereby required for the removal, reduction, cutting down, excavation, filling or alteration of topographic and vegetation characteristics. Written approval will be granted for the amount of earth movement required in plans and specifications approved pursuant to the provisions of Article III. Prior to approval of a Lot Owner's final draw-up or plans by the ARC, no trees or underbrush may be removed without the written consent of the ARC.

(y). **TIMBERLINE HOMEOWNERS ASSOCIATION, INC.** (the "Association"). By accepting a deed to a Lot, as an appurtenance to such Lot, an owner shall become a member of the Timberline Homeowners Association, Inc. and be subject to the Articles of Incorporation and By-Laws of such Association as they exist and are from time to time amended.

**IN WITNESS WHEREOF,** the undersigned, as the Developer of the Property, has caused this Declaration to be executed as of the 14 day of NOVEMBER, 2001.

Inst # 2001-54469

Timberline Development, LLC

By: W. Larry Clayton Manager  
W. Larry Clayton, Manager

Regions Bank

By: [Signature]  
Its: Inst # 2001-54469

12/12/2001-54469  
11:58 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
016 MEL 56.00

STATE OF ALABAMA )  
Shelby COUNTY )

I, the undersigned, a Notary Public, in and for said County in said State, hereby certify that W. Larry Clayton, as manager of Timberline Development, LLC, 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 this instrument, he, in his capacity as such manager, executed the same voluntarily, for and as the act of said limited liability company.

Given under my hand and official seal this 13<sup>th</sup> day of Nov, 2001.

Robert B. Sumner  
Notary Public  
My Commission Expires: 4-2004

STATE OF ALABAMA )  
Jefferson COUNTY )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Charles Watkins, whose name as Sr. Vice President of Regions Bank, a corporation is signed to the foregoing conveyance, and who is known to me, acknowledged before me this day that, being informed of the contents of the conveyance, he, as such officer and with full authority, executed the same voluntarily for and as the act of the corporation.

Given under my hand and official seal this 14<sup>th</sup> day of November, 2001.

Elizabeth M. Payne  
Notary Public  
My Commission Exp: \_\_\_\_\_

