

**DECLARATION OF  
MARKETING & CONVEYANCE COVENANTS  
FOR WYNLAKE SUBDIVISION PHASE 4C  
AS RECORDED IN MAP BOOK 29 AT PAGE 15  
IN THE PROBATE OFFICE OF SHELBY COUNTY, ALABAMA**

Inst # 2002-02008

01/11/2002-02008  
09:31 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
35.00  
D09 CH

(STATE OF ALABAMA)

(COUNTY OF SHELBY)

**KNOW ALL MEN BY THESE PRESENTS THAT:** Whereas the undersigned Wynlake Development, LLC, an Alabama limited liability company, who is the owner of Wynlake Subdivision (which together with its successors and assigns, is hereafter referred to as "**Developer**"), is the owner of all that certain real property situated in Shelby County, Alabama, which is more particularly described in **Exhibit "A"** attached hereto and incorporated herein by reference (the "**Development**"). All lots shown on the subdivision plat (the "**Subdivision Plat**") for the Development are hereinafter referred to individually as a "**Lot**" and collectively as the "**Lots**" and together or separately as the "**Property**" or "**land**".

**WHEREAS,** Developer desires to subject all the Development and each Lot located therein and the owners of those lots to the covenants, conditions, assessments, limitations and restrictions hereinafter set forth.

**NOW, THEREFORE,** Developer does hereby expressly adopt the covenants, conditions, limitations and restrictions for the Development as set forth herein (these "**Marketing & Conveyance Covenants**") and does hereby declare that the Development and each Lot located in the Development shall be and the same are hereby subject to the following covenants, conditions, assessments, limitations and restrictions:

**ARTICLE I**

**CONVEYANCE RESTRICTIONS & LIMITATIONS**

**1.01** Each owner of a Lot (which, together with their respective heirs, executors, personal representatives, successors and assigns, is hereinafter individually referred to as an "**Owner**" and collectively as the "**Owners**") within the Development, by acceptance of a deed to such Lot,

agrees that all rights to the mineral and non-mineral substances located on or beneath the land along with any mining rights thereto are reserved and excepted from the conveyance.

**1.02** Each Owner of a Lot within the Development, by acceptance of a deed to such Lot, agrees that the conveyance is made upon the covenant and condition that no right of action for damages on account of injuries to the land herein conveyed or to any buildings, improvements, structures, pipelines, or other sources of water supply now or hereafter located upon said land, or to any owners or occupant or other persons in or upon said land, resulting from sinkholes or other defects of the surface or subsurface of any nature affecting said land or resulting from past development operations of Developer, or its assigns, licensees, lessees, or contractors, or resulting from the past filling of soil, blasting, dewatering, or the past removal of soil, minerals and non-mineral substances by Developer, or its assigns, licensees, lessees, or contractors, whether said operations be in said lands or other lands, shall ever accrue to or be asserted by Developer or by Developer's successors in title, this conveyance being made expressly subject to all such injuries, either past or future, and this condition shall constitute a covenant running with the land as against Owner and all successors in title.

**1.03** Each Owner of a Lot within the Development, by acceptance of a deed to such Lot, warrants and agrees that as a condition of the conveyance hereunder, a) the Owner acknowledges that the physical and environmental condition of said land conveyed hereunder has been inspected by the Owner, or the Owner's duly authorized agent, and that said land is purchased by the Owner as a result of such inspection and not upon any agreement, representation, or warranty made by the Developer or its agents or representatives and b) the Owner accepts the physical and environmental condition of said land **"AS IS, WHERE IS, WITH ALL FAULTS"** and hereby releases the Developer, its successors and assigns, from any liability of any nature arising from or in connection with the physical or environmental condition of said land. This condition shall constitute a covenant running with the land as against the Owner and all successors in title.

**1.04** Each Owner of a Lot within the Development, by acceptance of a deed to such Lot, agrees that no private right of action shall accrue with respect to the physical or environmental condition of said land to any subsequent purchaser of said land, whether by foreclosure or otherwise, due solely to the taking of title to said land and, by taking such title, any such purchaser does thereby waive any and all right or claim against the Developer, its successors and assigns, or the Owner, or its successors and assigns or any of them, for any cost, loss, damage, or liability such purchaser or its successors and assigns may incur as a result of the physical or environmental condition of said land or the need or desirability to do any removal, corrective, or remediation work including, but not limited to, in connection with hazardous materials or waste pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Resources Conservation and Recovery Act, as amended, and all regulations thereunder or any similar laws or regulations enacted by the United States of America or the State of Alabama, or any agency or instrumentality of either.

**1.05** Each Owner of a Lot within the Development, by acceptance of a deed to such Lot, agrees that such conveyance is subject to the following; (a) any existing leases, licenses, agreements, restrictions, easements, rights-of-way, or encroachments of record; (b) any applicable zoning ordinances and subdivision regulations or other ordinances, laws, and



regulations affecting said land; (c) any real estate ad valorem taxes due and payable for the current tax year and subsequent years, and any other taxes, charges, or assessments of the levying jurisdictions; (d) all matters of public record affecting said land; and (e) encroachments, overlaps, boundary line disputes, or other matters which would be disclosed by an accurate survey or inspection of said lands.

1.06 Each and every covenant and restriction contained herein shall be considered to be an independent and separate covenant and agreement, and, in the event any one (1) or more of said covenants or restrictions shall, for any reason, be held to be invalid or unenforceable, all remaining covenants and restrictions shall nevertheless remain in full force and effect.

## **ARTICLE II**

### **AGREEMENT TO CONSTRUCT NEW RESIDENCE; OPTION TO REPURCHASE**

2.01 Each Owner of a Lot who purchases from the Developer agrees, for each Lot; a) to obtain a building permit issued by the governmental authority having jurisdiction, b) to obtain the written plan approval of the architectural review committee (the "*ARC*") as established in the Development's restrictive covenants, and c) to start construct of a new single family detached dwelling on the Lot to be offered for re-sale (the "*New Residence*") within the first year following the date on which the Owner takes title to the Lot (the "*Closing*"). The New Residence shall conform to the Development's restrictive covenants, be of good quality and workmanship, and be completed within a one (1) year period from the start of construction.

2.02 Each Owner of a Lot who purchases from the Developer agrees, for each Lot, to grant to the Developer the option to repurchase such Lot (provided, the Owner has not obtained (i) a building permit issued by the governmental authority having jurisdiction and (ii) the written plan approval of the ARC for the New Residence) for the amount paid to the Developer for such Lot, conditioned as follows; a) for a period of one (1) year first following the Closing, upon the contract for sale of such Lot by the Owner to a third party, the Owner hereby covenants to give the Developer a thirty (30) day written notice prior to the closing of such sale during which the Developer may notify the Owner of its intent to exercise its option to repurchase such Lot; or b) for a period of one (1) year subsequent to the first anniversary date of the Closing, the Developer may notify the Owner of its intent to exercise its option to repurchase such Lot. In the event the Developer elects to exercise its option to repurchase such Lot, the transaction shall be closed and deed delivered within thirty (30) days from the date of the Developer's notification to the Owner of its intent to exercise its option to repurchase. The Owner shall grant fee title equal to that received, free of all encumbrances not of record at the time the Owner acquired title from the Developer.

## **ARTICLE III**

### **MARKETING AGREEMENT & FEE**

**3.01** Each Owner of a Lot who purchases from the Developer agrees to participate in all group marketing and advertising programs and any other promotional endeavors organized by the Developer for the benefit of the Development.

**3.02** Each Owner of a Lot who purchases from the Developer agrees to keep the Property and the construction site clean and tidy and accessible to sales agents and potential customers.

**3.03** Each Owner of a Lot who purchases from the Developer agrees to co-op the sale of each New Residence to be constructed on the Property with any real estate broker working with Development.

**3.04** Each Owner of a Lot who purchases from the Developer agrees to provide a lock box or master keyed locks during construction, so that the property may be shown by any real estate broker working with Development.

**3.05** Each Owner of a Lot who purchases from the Developer agrees to pay a marketing fee to the Developer as follows; a) a fee of one (1%) of the selling price of each New Residence to a third party, becoming due and payable at the time of the closing of such sale; or b) a fee of one (1%) of the appraised value of each New Residence, becoming due and payable at the time of first occupancy.

## **ARTICLE IV**

### **ASSESSMENT & LIEN**

**4.01** The option to repurchase, setforth in *Section 2.02* above, shall be a continuing lien upon each Lot until its expiration as provided therein.

**4.02** The marketing fee, setforth in *Section 3.05* above, shall be an assessment, together with interest, cost and reasonable attorneys' fees, and shall be a charge on each Lot and a continuing lien upon each Lot against which such assessment is made, which lien may be enforced in the manner hereinafter provided. Each such assessment, together with interest, late charges, cost and reasonable attorneys' fees shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due or was due.

**4.03** The Developer shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Developer setting forth whether the assessment on a Lot has been paid. A properly executed certification of the Developer as the status of the assessment on a Lot is binding upon the Developer as of the date of its issuance.

**4.04** Any assessments which are not paid on or before the due date of the same shall bear interest from and after such due date at a rate equal to the lesser of eighteen percent (18%) per annum or the highest rate which may be charged to such Owner by law. In the event any



assessments or other amounts due to the Developer are not paid by any Owner when the same comes due, then, in addition to all other rights and remedies provided at law or in equity, the Developer may undertake any of the following remedies.

(a) The Developer may commence and maintain a suit at law against the Owner for a personal money judgment to enforce all such charges and obligations for assessments and other amounts due to the Developer, which amount shall include the interest specified above as well as all attorneys' fees, court cost and all other costs and expenses paid or incurred by the Developer in connection therewith, and/or

(b) The Developer may enforce the lien created pursuant to *Section 4.01* above as hereinafter provided. The lien created pursuant to *Section 4.02* above shall secure the payment of any and all assessments levied against any Lot or Owner, all interest as provided above as well as all attorneys' fees, court costs and all other expenses paid or incurred by the Developer in attempting to collect the assessments and in maintaining any legal action in connection therewith. If any Assessments and other charges remain unpaid for more than ten (10) days following the due date of the same, then the Developer shall make written demand on the defaulting Owner, which demand shall state the date and amount of delinquency. If such delinquency is not paid in full within ten (10) days after the giving of such demand notice, then the Developer may file a claim of lien against the Lot of such delinquent Owner, which claim shall be executed by the Developer and shall be filed for record in the Probate Office of Shelby County, Alabama. The lien provided for herein shall be in favor of the Developer and may be foreclosed in the same manner as a foreclosure of a mortgage on real property under the laws of the State of Alabama, as the same may be modified or amended from time to time. The Developer shall have the right and power to bid at any such foreclosure sale and to purchase, acquire, hold, lease, mortgage, convey and sell any such Lot purchased at any such foreclosure proceeding. Each Owner, by acceptance of a deed to any Lot, shall be deemed to (i) grant and vest in the Developer and/or its agents the right and power of sale to exercise the power granted herein and foreclose the lien created herein, (ii) grant and vest in the Developer and/or its agents the right and power to bring all actions against such Owner personally for the collection of all amounts due from such Owner, (iii) expressly waive any objection to the enforcement in foreclosure of the lien created herein and (iv) expressly waive the defense of the statute of limitations which may be applicable to the commencement of any suit or action for foreclosure. No Owner may waive or otherwise be exempt from the liability to pay the assessments provided herein.

**4.05** The lien for assessments and other charges provided for herein with respect to any Lot shall be subordinate to the lien of any original first mortgage encumbering such Lot to any financial institution authorized to do business in the State of Alabama made for the purpose of financing the construction of the New Residence. The sale or transfer of any Lot shall not affect any lien retained by the Developer on any Lot, provided, however, that the date of transfer of any Lot pursuant to a foreclosure of any mortgage as described in the preceding sentence or any similar proceedings shall extinguish the lien of such assessments.

**4.06** In addition to the rights and remedies set forth above, if any owner (or his contractor) shall violate or attempt to violate any of the covenants and restrictions set forth herein, then Developer shall have the right to prosecute proceedings at law for the recovery of damages against such Owner as a result of such violations or maintain a proceeding in equity against such Owner to enjoin such violation; provided, however, that the rights and remedies set forth herein shall be deemed to be cumulative of all other rights and remedies available at law or in equity. In any such proceedings, the Developer shall be entitled to recover all costs and expenses, including reasonable attorneys' fees, incurred by any of them in such proceedings, as well as interest on all unpaid amounts as specified in *Section 4.04* above. The failure of the Developer to institute proceedings for any one (1) or more violations of these covenants shall not constitute approval of the same or be construed as a waiver of any right of action contained herein for past or future violations of said covenants and restrictions.

## **ARTICLE V**

### **MISCELLANEOUS**

**5.01** Developer reserves the right, in its sole and absolute discretion, at any time and from time to time to add and submit any additional property ( the "**Additional Property**") situated adjacent to or in close proximity with the Development to the terms and provisions of these Marketing & Conveyance Covenants. Additional Property may be submitted to the provisions of these Marketing & Conveyance Covenants by an instrument executed solely by Developer and filed for record in the Probate Office of Shelby County, Alabama, which instrument shall be deemed an amendment to these Marketing & Conveyance Covenants which need not be consented to or approved by any Owner or his mortgagee and which may contain different terms, conditions, restrictions and provisions from those set forth herein. From and after the date on which amendment to these Marketing & Conveyance Covenants is recorded in the Probate Office of Shelby County, Alabama, submitting an Additional Property to the terms and provisions hereof, (a) all references herein to Owner shall include the Owners of all Lots within the Development and the Owners of all Lots within such Additional Property, (b) all references herein to the Development shall include the Additional Property. In no event shall Developer be obligated to submit any Additional Property to the provisions of these Marketing & Conveyance Covenants or to otherwise impose any covenants, conditions or restrictions set forth herein upon any other property owned by Developer situated adjacent to or in close proximity with the Development.

**5.02** The terms and provisions of these Marketing & Conveyance Covenants shall be binding upon each Owner and the respective heirs, executors, administrators, personal representatives, successors and assigns of each Owner and shall enure to the benefit of Developer. These Marketing & Conveyance Covenants shall be deemed covenants running with the land.

**5.03** These covenants and restrictions may be amended or altered solely by the Developer during such periods of time as the Developer owns any Lot in the Development, so long as such amendment does not materially and adversely affect or alter any Owner's right to use his Lot.



**5.04** All personal pronouns used herein, 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 vice versa.

**5.05** Each Owner hereby waives any right to seek or obtain judicial partition of any portion of the Development.

**5.06** Notwithstanding anything provided herein to the contrary, no sale, transfer, conveyance, lease, pledge, encumbrance or other hypothecation of any Lot by Developer to any third party shall constitute or be deemed a transfer of any of the rights reserved herein to Developer unless express reference is made in such instrument of conveyance to the specific rights created in these Marketing & Conveyance Covenants which Developer is transferring to such third party.

**5.07** Whenever in these Marketing & Conveyance Covenants, Developer has the right to approve, consent to or require any action to be taken, 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 Developer.

**5.08** These covenants and restrictions shall not alter or amend any covenants or restrictions previously recorded that apply to the Development.

**5.09** THE DEVELOPER AND THE OWNERS HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, CLAIM, OR COUNTERCLAIM, WHETHER IN CONTRACT OR TORT, AT LAW OR IN EQUITY, ARISING OUT OF OR IN ANY WAY RELATED TO THESE COVENANTS.

**IN WITNESS WHEREOF**, the Developer has executed this instrument on the 10<sup>th</sup> day of January, 2002.

**DEVELOPER:**

**WynLake Development, LLC**

By: SERMA Holdings, LLC; Its Operating Manager

BY:

  
J. Michael White;

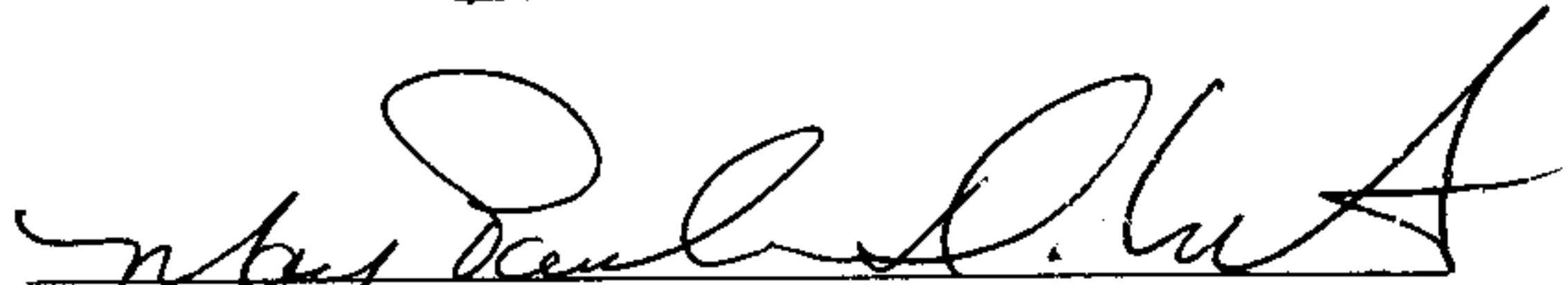
Its Operating Manager

1/10/02  
(date)

STATE OF ALABAMA )  
JEFFERSON COUNTY )

I, the undersigned, a Notary Public in and for said County and for said State, hereby certify that J. Michael White, whose name as Operating Manager of SERMA Holdings, LLC, in its capacity as Operating Manager of WynLake Development, LLC, an Alabama limited liability company, is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyances, he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and seal of office this the 10<sup>th</sup> day of January, 2002.

  
NOTARY PUBLIC

My Commission Expires: **NOTARY PUBLIC STATE OF ALABAMA AT LARGE**  
**MY COMMISSION EXPIRES: Feb. 10, 2002.**  
**BONDED THRU NOTARY PUBLIC UNDERWRITERS.**



## **EXHIBIT A**

All lots and lands shown in the subdivision plat map of Wynlake Phase 4C recorded in Map Book 29 at Page 15 in the Probate Office of Shelby County, Alabama.

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