
DECLARATION
OF
PROTECTIVE COVENANTS
FOR
SILVER CREEK

This Instrument Prepared by:

✓ **Kevin Hays and Associates, PC**
100 Concourse Parkway, Suite 101
Birmingham, AL 35244
PH: 205-733-1207

Inst # 2002-17873

04/17/2002-17873

10:25 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
016 MSB 56.00

STATE OF ALABAMA
SHELBY COUNTY

**DECLARATION OF PROTECTIVE COVENANTS
FOR SILVER CREEK**

KNOW ALL MEN BY THESE PRESENTS, That:

WHEREAS, Silver Creek Development, L.L.C., an Alabama Limited Liability Company (“Developer”) owns certain land in Shelby County, Alabama (hereinafter sometimes referred to as the “Subject Property”), more particularly described as Silver Creek, as recorded in Map Book 29, Page 81, in the Probate Office of Shelby County, Alabama, and

WHEREAS, Developer desires to establish certain protective covenants with respect to the Subject Property as set forth herein, which protective covenants will run with the Subject Property and be binding on all parties having any right, title or interest in the Subject Property or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each owner thereof; and

WHEREAS, Developer may acquire additional land in Shelby County adjacent, or in close proximity to, the Subject Property, and may at Developer’s discretion without any requirement to do so, subject the additional land or portions thereof to this Declaration of Protective Covenants at which time the additional land will become a part of the Subject Property.

NOW, THEREFORE, Developer does hereby declare that the Subject Property shall hereafter be subject to the following restrictions, conditions, exceptions, liens and protective covenants, to-wit:

ARTICLE I

DEFINITIONS

- 1.1 **Articles.** The Articles of Incorporation of the Association.
- 1.2 **Association.** Silver Creek Residential Association, LLC, its successors and assigns (the Articles of Incorporation and Bylaws for which are recorded in the Office of the Judge of Probate of Shelby County, Alabama, concurrently herewith).
- 1.3 **Association Land.** That part of the Subject Property which may at any time hereafter be owned by the Association for so long as the Association or successor thereof may be the owner thereof.
- 1.4 **Board.** The Board of Directors of the Association.
- 1.5 **Bylaws.** The Bylaws of the Association.
- 1.6 **Builder.** A builder licensed under the laws of the State of Alabama to construct residential dwellings.
- 1.7 **Common Areas.** Those portions of the Subject Property which are conveyed to the Association by deed or other conveyance of which are defined or designated as Common Areas pursuant to this Declaration or by notation on any record map or plat of the Subject Property.
- 1.8 **Declaration.** This Declaration of Protective Covenants for Silver Creek, 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 herein.

1.9 **Developer.** Silver Creek Development, L.L.C. and any successor thereof and any purchaser from or any portion of the Subject Property to whom also conveys and assigns its rights hereunder as Developer.

1.10 **Development Plan.** The development plan for a Parcel (including any future modifications thereto), includes plat plans, grading plans, building plans and specifications showing site and plot layout and all exterior elevations, exterior materials and colors therefore, foundation plans, schedule of proposed materials, landscaping, irrigation and drainage plans, design and location of all improvements including, without limitation, the dwelling, mailboxes, and entrance columns and other construction related plans requested by the Architectural Review Committee.

1.11 **Improvement.** Any dwelling, building, wall, enclosure, fence, mailbox, parking facility, storage facility, utility facility or any other structure of any type, road, curb cut, landscaping (including removal or placement of vegetation), excavation (including removal of trees), irrespective of whether the improvement is temporary or permanent.

1.12 **Member.** A Parcel Owner.

1.13 **Silver Creek or Silver Creek Property.** The name of the subject property.

1.14 **Parcel.** Any unit, lot, part or parcel of the Subject Property designed for a residence and platted of record, regardless of whether a dwelling has or has not been constructed thereon.

1.15 **Parcel Owner.** The owner or owners of record title to any Parcel.

1.16 **Resident.** Any person or persons occupying a Parcel.

1.17 **Subject Property.** The property subjected to this Declaration, including both the property more particularly described as Silver Creek, as recorded in Map Book 26, Page Number 144, in the Probate Office of Shelby County, Alabama, as set forth on page 1 of this Declaration, and any other real property which may be subjected to this Declaration by separate instrument executed by Developer.

1.18 **Termination of Developer Voting Rights.** The date which is the earlier of (i) the expiration of one (1) year during which Developer does not own any portion of the Subject Property or (ii) the time when Developer notifies the Association in writing that Developer relinquishes and terminates Developer's control over the Association.

ARTICLE II

ARCHITECTURAL REVIEW COMMITTEE: ARCHITECTURAL CONTROL

2.1 **Architectural Review Committee.** The Architectural Review Committee (the "Committee") shall be composed of at least two and no more than five individuals designated and re-designated from time to time by the Developer until Termination of Developer Voting Rights. The initial members of the Committee shall be MICHAEL D. GREEN AND RITA LAYNE. The members of the Committee will be designated and may be removed at any time by the Developer, until such time as there is a Termination of Developer Voting Rights. Upon Termination of Developer Voting Rights, the Board of Directors of the Association shall have the right to appoint and terminate, with or without cause, all members of the Committee. At that time, the Association shall become vested with the rights, duties and functions of the Committee, all of which shall be enforceable by the Association.

2.2 **Approval Required; Development Plan.** Before commencing the construction of alteration of any Improvements on any Parcel, two copies of the Development Plan must first be submitted in writing to and approved in writing by the Architectural Review Committee. The Committee shall have the right to establish and amend from time to time written rules, regulations, and standards governing

construction and alteration of any dwellings or other improvements on any Parcel, as well as the content and types of information required to be submitted to the Committee for its approval, each of which shall be in addition to the provisions and requirements set forth herein.

2.3 Alterations. Any exterior remodeling, reconstruction, alterations or additions to an existing dwelling or any activity which would change or alter the exterior appearance of a dwelling or other structure or other improvement must be approved in writing by the Committee. Interior remodeling, reconstruction or alterations of a dwelling not affecting the exterior appearance of the dwelling shall not require the written approval of the Committee, but shall comply with all restrictions and covenants set forth herein.

2.4 Application Process.

(a) No improvement shall be erected, placed, altered, maintained or permitted on any Parcel until two (2) copies of the Development Plan shall have been submitted in writing to and approved in writing by the Architectural Review Committee. The Development Plan shall be submitted in writing over the signature of any Parcel Owner or its authorized agent, and shall be accompanied by the request of any Parcel Owner or its agent, specifying for which part of the Development Plan approval is sought.

(b) In any case in which the Architectural Review Committee shall disapprove a Development Plan or shall approve the Development Plan only upon specified modifications or conditions, the disapproval or qualified approval shall be accompanied by a statement of the grounds upon which such action is based. Upon approval by the Committee or any Development Plan submitted hereunder, a copy of the Development Plan, as approved, shall be deposited for permanent record with the Committee.

(c) If the Architectural Review Committee fails either to approve or to disapprove the Development Plan within thirty business days after the Development Plan has been submitted in writing to the Committee, it shall be conclusively presumed that the Committee has approved the Development Plan, subject, however, to the covenants contained herein, and provided that the applicant provides conclusive proof that the Committee actually received the Development Plan. This proof may be provided only by an acknowledgement of receipt of the Development Plan signed by the Committee or by a return receipt for certified mail signed by the Committee, which certified mail forwarded the Development Plan to the Committee.

(d) The Committee shall, in its sole discretion, determine whether the Development Plan and other data submitted by any Parcel Owner for approval are acceptable. Any approval granted by the Committee shall be effective only if the approval is in writing. The Committee shall have the right to disapprove any Development Plan upon any ground which is consistent with the objectives and purposes of this Declaration, including without limitation, purely aesthetic considerations, failure to comply with any of the provisions of this Declaration, failure to provide requested information, objection to exterior design, appearances or material, objection on the ground of incompatibility with the overall scheme of development for the Parcel or for the Subject Property, objection to location of any proposed Improvement on any Parcel, objection to the color scheme, finish, proportions, style of architecture, height, bulk or appropriateness of any dwellings or other Improvement on any Parcel or any other matter which in the sole and absolute judgment of the Committee would render the proposed dwelling or other Improvement inharmonious with the general plan of development for the Subject Property. The approval of the Development Plan for any one specific dwelling or other Improvement shall not be deemed an approval or otherwise obligate the Committee to approve a similar Development Plan for any other Improvement to be constructed or located on any Parcel within the Subject Property.

2.5 Inspection Rights. The Developer, the Association or the Committee, or any agent or employee thereof, may at any reasonable time or times enter upon and inspect any Parcel and any Improvement thereon for the purpose of ascertaining whether the maintenance of such Parcel and the maintenance, construction or alteration of any Improvement thereon are in compliance with the provisions hereof; and neither Developer, nor the Association, nor the Committee, nor an agent, officer or employer thereof shall be deemed to have committed a trespass or other wrongful act by reason of the entry or

inspection. Any inspection shall be for the sole purpose of determining compliance with this Declaration, and neither the making of any inspection, nor the failure to make any inspection, shall be relied upon by Parcel Owners or any third persons or entities for any purpose whatsoever, nor shall any inspection obligate Developer, the Association, or the Committee to take any particular action based on the inspection.

2.6 Condition of Property. The Subject Property may be located in an area which includes underground mines, tunnels, sinkholes and subsurface conditions. The approval of Development Plan by the Committee shall not be construed in any respect as a representation or warranty by the Committee, the Association or Developer or of any officer, director, employee or agent of any of them, to any Parcel Owner or any other person that the surface or subsurface conditions of any Parcel are suitable for the construction of a dwelling or other Improvement thereon. It shall be the sole responsibility of each Parcel Owner to determine the suitability and adequacy of the surface and the subsurface conditions of the Parcel. None of the entities or persons referred to in this Section shall be liable or responsible for any damage or injury suffered or incurred by any Parcel Owner or any other person as a result of surface or subsurface conditions affecting a parcel or any portion thereof, including without limitation, any surface or subsurface drainage or underground mines, tunnel, sinkholes or other conditions or types of ground subsidence occurring on or under any Parcel.

2.7 Waiver of Liability. THE SCOPE OF REVIEW BY THE ARCHITECTURAL REVIEW COMMITTEE IS LIMITED TO APPEARANCE ONLY AND DOES NOT INCLUDE ANY RESPONSIBILITY OR AUTHORITY TO REVIEW FOR STRUCTURAL SOUNDNESS, COMPLIANCE WITH BUILDING OR ZONING CODES OR STANDARDS, OR ANY OTHER SIMILAR OR DISSIMILAR FACTORS. None of the Committee, or the Association, the Developer, or any architect, agent, officer or employee of any of the foregoing, shall be responsible in any way for the failure of any Improvement to comply with requirements of this Declaration, even if a certificate of compliance has been issued, nor for any defects in any Development Plan submitted, revised or approved, nor for any structural or other defects in any work done according to any Development Plan, and all persons relying thereon agree not to sue or claim against the entities and persons referred to in this Section for any cause arising out of the matters referred to in this Section and further agree to and do hereby release each of these entities and persons from any and every such cause. Each Parcel Owner, by acceptance of a deed to any Parcel, hereby releases the Committee, the Association, the Developer and their respective agents, officers, directors, members and successors and assigns, from all liability of every nature whatsoever arising from damage, loss or expense suffered, claimed, paid or incurred by any Parcel Owner or from any injury to property or injury or death to any person, related in any way to any defects in any Development Plan submitted to or approved by the Committee, any defects resulting in any work done under the Development Plan or other data submitted, or any action taken or not taken by the Committee, Developer or the Association related thereto.

2.8 Variances. The Committee shall have the right, in its sole and absolute discretion, to grant any variances from any of the restrictions contained in this Declaration upon written application to the Committee requesting a variance; provided, however, that the grant of a variance to one party shall not vest in any other party a right to receive the same or a similar variance. All variances shall be in writing and signed by the Chairman or Vice-Chairman of the Committee.

2.9 Charges for Review of Plans, Certifications. The Committee shall have the right to establish from time to time reasonable charges and fees for the review of any Development Plan, and for issuing any certificate or statement required by, or requested pursuant to, this Declaration. The Committee shall upon request and at reasonable charges, furnish to any Parcel Owner a written certificate setting forth whether all necessary approvals have been obtained from the Committee in connection with any dwelling or other Improvement on a Parcel.

2.10 Developer's Exemption. Developer and any Parcel or other portion of the Subject Property owned by Developer shall be exempt from the covenants and other requirements of Article II.

ARTICLE III

GENERAL RESTRICTIONS

3.1 Land Use and Building Type. No Parcel shall be used except for single-family residential purposes. No building shall be erected, placed or permitted to remain on any Parcel other than one single-family dwelling not to exceed two and one-half stories or forty (40) feet in height, and any additional detached structures as shall be approved by the Committee. No mobile home or modular house may be placed on a Parcel.

3.2 Construction Standards. Except as otherwise specifically approved or required by the Committee with respect to any particular Parcel, each Parcel and the Improvements thereon shall be constructed and maintained in accordance with the following requirements and standards:

(a) The exterior finish of each dwelling shall be brick, stone, horizontal vinyl or wood siding or a combination thereof. The front portion of the dwelling must show brick or stone to the extent required by the Committee.

(b) Wood frame, vinyl or painted aluminum windows will be used exclusively on the sides, fronts, and rears of all dwellings. No unpainted or unprimed aluminum windows will be allowed.

(c) No lot shall be used except for single-family residential purposes. No dwellings shall be erected on any Lot which is zoned R3 containing less than fourteen hundred (1400) square feet for a one-story house; sixteen hundred (1600) square feet for a one and one-half story house and sixteen hundred (1600) square feet for a two-story house. No dwelling shall be erected on any Lot which is zoned R2 containing less than sixteen hundred (1600) square feet for a one-story; two thousand (2000) square feet for a one and one-half story; and two thousand (2000) square feet for a two story..

(d) The Improvements on each Parcel within the subject property must include adequate off-street parking to accommodate at least two (2) vehicles.

(e) No concrete block work, including foundations, concrete block steps, walkways, walls or any other concrete block work, whether painted or otherwise, shall show above ground or from the exterior of any dwelling in excess of eight (8) inches.

(f) No garage may be enclosed and finished as living area.

(g) No vertical siding shall be used on the construction of any dwelling.

(h) No window unit air-conditioning shall be placed on any Parcel. Outside air-conditioning units may not be located in the front yard of any Parcel or within any side yard adjacent to any street on corner lots.

(i) No open carports shall be allowed on any Parcel.

(j) The roof pitch on any dwelling shall not be less than six to twelve unless otherwise approved in writing by the Committee. All roof vents and pipes shall be painted as near the color of the roof as practicable, and shall be located on the rear of the dwelling and not visible from the front. No solar or other energy collection device or equipment shall be maintained on any Parcel or dwelling if the same would be visible from the street. No projections of any type shall be allowed above the roof of any dwelling except for chimneys and vent stacks approved by the Committee.

(k) Utility service shall be underground. No utility poles or above ground wires shall be permitted except during the construction phase and except for streetlights as approved by the Committee. The size and location of any propane gas tanks and similar facilities shall be subject to the approval of the Committee.

(l) No individual water supply system shall be permitted on any Parcel unless the system, in all respects, complies with the requirements and recommendations of all state and local laws and regulations. Approval of any system as installed shall be obtained from all government agencies.

(m) No individual sewage disposal system shall be permitted on any Parcel unless the system, in all respects, complies with the requirements and recommendations of all state and local laws and regulations. Approval of any system as installed must be obtained from all governmental agencies.

(n) No shrubs or trees shall be planted on street corners or beside driveways that will impede the view or sight of pedestrians or operators of automobiles.

(o) Upon the completion of a dwelling, all front and side yards must be landscaped with sod and other landscaping approved by the Committee. The rear yard must be hayed, seeded or sodded.

(p) No outside radio, television, ham broadcasting or other electronic antenna, aerial or tower, or any satellite dish or similar structure, shall be erected or maintained on any Parcel, except as approved in writing by the Committee, and none shall be visible from the front of any dwelling.

(q) All driveways must be concrete finish. All Parcel Owners shall install concrete sidewalks on each Parcel parallel with the street.

(r) To insure the maintenance of the natural beauty, no Parcel Owner shall dam up the creeks which flow through the Subject Property, nor shall any Parcel Owner change the flow of any creek or any wet weather streams.

(s) Subject to the provisions of Article VII and VIII below and the rights retained below by the Committee, each Lot and any dwelling, building or other structure constructed or placed thereon shall be subject to the following minimum setbacks, based on the approved master plan of Silver Creek by the city of Alabaster.

R3 ZONING:

Front: Thirty (30) feet from dedicated road right-of-way;
Side: Twenty (20) feet between house with minimum of five (5) feet from property line; and
Rear: Thirty (30) feet from the rear lot line.

R2 ZONING:

Front: Thirty Five (35) feet from the dedicated road right -of-way,
Side: Ten (10) feet from the side property line. .
Rear: Thirty Five (35) feet from the rear lot line.

(t) All Lots shall be landscaped in accordance with standards established by the Committee. Each owner must plant and maintain at least one (1) tree, a minimum of six (6) feet in height, visible from the street fronting said dwelling approved by the Committee. All landscaped areas on any Lot shall be maintained in good condition by the Owner thereof and any of the aforesaid trees which die or become diseased or damaged shall be promptly replaced with new trees by the homeowner of such Lot.

3.3 Fences. All fences are subject to the approval of the Committee. All fences must be wood with the finished side on the outside and must be at least six (6) feet in height. No fence, wall, hedge or shrub planting which obstructs sight lines from any roadways within the Subject Property shall be placed or permitted to remain on any Parcel.

3.4 Mailboxes and House Numbers. At the time of construction of a dwelling on each Parcel, there must be erected a mailbox bearing the house number. The design and materials of the mailbox (which must match the house on the Parcel) must be approved by the Committee. All mailboxes and house numbers must be erected by the Parcel Owners in strict conformity with design criteria and Development

Plan approved by the Committee, which shall be common for each Parcel within a specific sector of the Subject Property.

3.5 Temporary and Auxiliary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Parcel at any time as residence, either temporarily or permanently. No auxiliary structures may be placed on a Parcel unless same have been approved by the Committee.

3.6 Storage of Boats, Trailers or Other Vehicles. No automobiles or other vehicles will be stored on any Parcel or Common Area or kept on blocks unless in the basement or garage of a dwelling. Boats, utility trailers, recreational vehicles and travel trailers must either be parked or stored in the basement or garage of a dwelling or within a completely enclosed structure on a Parcel, which structure must be approved by the Committee. No tractor trailer trucks, panel vans or other commercial trucks in excess of one (1) ton classification shall be parked or stored on any Parcel or Common Area, except during initial construction of a dwelling on a Parcel. The prohibitions in this Section shall not apply to temporary parking of trucks and other commercial vehicles providing commercial services to the Parcel or to the efforts and activities of Developer in connection with developing the Subject Property.

3.7 Certain Yard Restrictions. The following shall be located or maintained only at the rear of or behind a dwelling: wood piles, articles such as children's toys, jungle gyms, trampolines and other outdoor recreational equipment and appurtenances, statues, water fountains, bird baths, flagpoles, bird feeders, wood carvings, plaques, other home crafts or furniture. Barbecue grills and other outdoor cooking equipment and apparatus shall be located only at the rear of a dwelling and should not be visible from any public street. Freestanding playhouses and treehouses must be approved by the Committee. No above-ground swimming pools shall be located on any Parcel, unless rear yard is completely fenced as specified in Paragraph 3.3 (Fences). Outside clothes lines and other facilities for drying or airing of clothes are prohibited. No clothing, rugs or other items shall be hung, placed or allowed to remain on any railing, fence or wall. No rocks, rock walls, fencing or other substance shall be placed on any Parcel as a front or side yard border or to prevent vehicles from parking on or pedestrians from walking on any portion of a Parcel or to otherwise impede or limit access thereto. Seasonal or holiday decorations (Christmas trees and lights, pumpkins, Thanksgiving decorations) shall be removed promptly from any Parcel or dwelling within thirty (30) days following the holiday.

3.8 Completion of Construction. Construction of any dwelling or other Improvement must be completed within six (6) months from the date construction commenced, and must be prosecuted diligently and continuously. There shall be no occupancy of a dwelling until the dwelling is completed and finally inspected by the appropriate government authority.

3.9 Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying, mining operations of any kind, oil wells, tanks, tunnels, mineral excavation, or shafts shall be permitted upon or in any Parcel. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Parcel.

3.10 Livestock and Poultry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Parcel, except that dogs, cats or other household pets, not to exceed two (2) in number, may be kept provided they are not kept, bred or maintained for any commercial purpose and that the animals do not violate any applicable law, ordinance or regulation.

3.11 Garbage and Refuse Disposal. No Parcel shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

3.12 Crops & Gardens. No Parcel shall be cultivated for crops of any sort, except gardens of reasonable size, which are to be located at the rear of a dwelling and not visible from any public street.

3.13 **Common Area Traffic.** Motorized vehicular traffic of any type is prohibited on any Common Area except as may be required or permitted by the Developer or the Association for maintenance or construction.

3.14 **Proscribed Uses.** No operation or uses shall be permitted or maintained on any Parcel which cause or produce any of the following effects discernible within any portion of the Subject Property except during the period of construction of Improvements thereon:

- (a) Noise or sound that is unusual and inappropriate for the Subject Property and is objectionable because of its volume, duration, intermittent beat, frequency or shrillness;
- (b) Noxious, toxic or corrosive fumes or gases;
- (c) Obnoxious odors;
- (d) Dust, dirt or fly ash; or
- (e) Unusual fire or explosive hazards.

3.15 **Covenant with Respect to Maintenance of Parcel and Improvements- Liens.** Each Parcel Owner shall keep all Parcels owned by the Parcel Owner, and all Improvements therein, thereon or appurtenant thereto, in good order and repair, including the seeding, watering and mowing of all lawns, the pruning and cutting of all trees and shrubbery and the painting (or other appropriate external care) of all buildings and other Improvements, all in a manner and with such frequency as is consistent with good property management. There shall be no outside burning of wood, leaves or trash except during construction of a dwelling or with approval of the fire department. If in the opinion of the Association any Parcel Owner fails to perform the duties imposed by the preceding sentence after thirty (30) days written notice from the Association to the Parcel Owner to remedy the condition in question, the Association shall have the right, through its agents and employees, to enter upon the Parcel in question (or upon the improvements which may be appurtenant thereto) and to repair, maintain, repaint and restore the Parcel or Improvement and the cost thereof shall be a binding personal obligation of the Parcel Owner as well as a lien (enforceable in the same manner as a mortgage) upon the Parcel in question. Any landscaping approved by the Committee cannot be changed pursuant to this Section.

3.16 **Priority of Lien.** The lien provided in Section 3.15 hereof shall be valid as against a bonafide purchaser (or bonafide mortgagee) of the Parcel in question unless a notice of the lien shall have been recorded in the office of the Judge of Probate of Shelby County, Alabama, prior to the recordation in the office of the deed (or mortgage) conveying the Parcel in question to a purchaser (or subjecting the same to such mortgage).

3.17 **Insect and Fire Control.** In order to implement effective insect and fire control. The Association and/or Developer and their agents shall have the right to enter upon any Parcel on which a dwelling has not been constructed and upon which no landscaping plan has been approved as set forth herein, such entry may be made by personnel with tractors or other suitable devices, for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds or other unsightly growth, which in the opinion of the Association or Developer detracts from the overall beauty, setting and safety of the Subject Property. Entrance for these purposes shall not be deemed a trespass. The Association and/or Developer and their agents likewise may enter upon any Parcel to remove any trash which has collected on the Parcel, and the entrance and removal shall not be a trespass. The provisions in this Section shall not be construed as an obligation on the part of the Association or Developer to mow, clear, cut or prune any Parcel nor to provide garbage or trash removal service.

3.18 **Signs.** No sign shall be nailed or attached to trees. No commercial signs, including "for rent," "for sale," and other similar signs shall be erected or maintained on any Parcel unless authorized in writing by the Association, except that one sign advertising the Parcel for sale or lease, not in excess of five

square feet, and not greater than five feet above ground level, shall be permitted without the consent of the Committee. If permission is granted, the Committee may restrict the size, color and content of all signs.

3.19 **Fireplaces and Chimneys.** No cantilever fireplaces or chimneys shall be erected or maintained with any structure on any Parcel. All chimney chases must touch the ground or be supported by the foundation of the dwelling.

3.20 **Subdivided Parcels.** No Parcel shall be subdivided or its boundary lines changed except with the written consent of the Developer and the Committee. However, Developer hereby expressly reserves to itself the right, without the approval of the Committee, (i) to combine any two (2) or more Parcels shown on the plat of any subdivision in order to create a modified Parcel or Parcels; and (ii) to subdivide any Parcel shown on the plat of any subdivision. Developer may take such other steps as are reasonably necessary to make such replatted or subdivided Parcels suitable and fit as building sites, including but not limited to the relocation of easements, walkways and rights-of-way to conform to the new boundaries of the said replatted Parcels.

3.21 **Changes to Roadways.** Developer reserves the right to make any road or other improvements within the Subject Property, to extend roads and streets, and to change or extend the present road or any street grades, without liability to any Parcel Owner for any claims or damages. Except with the prior written consent of Developer, no Parcel shall be sold or used by a Parcel Owner for the purpose of extending any public or private road, street or alley or to provide a means of access to any other real property situated adjacent to or in close proximity with the Property.

3.22 **Developer's Extension.** Developer and any Parcel or other portion of the Subject Property owned by Developer shall be exempt from the covenants and requirements of this Article III.

ARTICLE IV

LAKE LOTS

4.1 **Developer contemplates** that portions of the Development may include lakes and water areas. The use of lakes and water areas shall be subject to such rules and regulations which may be adopted and amended from time to time by the Association. Such restrictions may prohibit or limit the type of boating and other recreational activities in or upon such lake areas and may require that any improvements on or adjacent to such lake areas be approved by the Committee.

4.2 THE OWNER OF ANY LOT OR DWELLING ABUTTING ANY LAKE OR WATER AREAS WITHIN THE DEVELOPMENT, FOR HIMSELF, ANY OCCUPANT OF THE SAME AND THEIR RESPECTIVE INVITEES, HEIRS, EXECUTORS, PERSONAL REPRESENTATIVES, ADMINISTRATORS, SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "RELEASING PARTIES") BY ACCEPTANCE OF A DEED TO SUCH LOT, DE HEREBY WAIVE ALL CLAIMS AGAINST AND RELEASE DEVELOPER, THE ASSOCIATION AND THE COMMITTEE, THEIR RESPECTIVE OFFICERS, DIRECTORS, PARTNERS, SHAREHOLDERS, SUCCESSORS AND ASSIGNS, FROM AND AGAINST ANY AND ALL LIABILITY OF ANY NATURE ARISING OUT OF OR ON ACCOUNT OF ANY LOSS, DAMAGE OR INJURY TO PERSONAL PROPERTY, INCLUDING DEATH AS A RESULT OF ANY ENTRY ONTO THE LAKES OR WATER AREAS BY ANY OF THE RELASEING PARTIES, THE RISE AND FALL OF THE WATER LEVEL OF ANY LAKE OR ANY WATER AREA INCLUDING, WITHOUT LIMITATION, THE FLOW OF WATER ONTO AND OUT OF LAKES WHICH COULD RESULT IN OR CAUSE DAMAGE, BY FLOODING, SOIL EROSION OR OTHERWISE, TO THE LAND OF ANY OWNER, THE IMPROVEMENTS ON ANY LOT OR ANY PERSONAL PROPERTY SITUATED ON ANY PORTION OF ANY LOT OR WHICH WOULD RESULT IN OR CASUE ANY IMPROVEMENTS SITUATED OR ADJACENT TO THE LAKES OR WATER AREAS TO BE UNUSABLE DUE TO LOW WATER LEVELS. FURTHERMORE, THE RELEASING PARTIES DO HEREBY ACKNOWLEDGE AND AGREE THAT (1) NEITHER DEVELOPER, THE ASSOCIATION OR THE COMMITTEE NOR ANY OF THEIR

RESPECTIVE AGENTS, EMPLOYEES, REPRESENTATIVES, SUCCESSORS AND ASSIGNS, SHALL PROVIDE ANY LIFEGUARD OR ANY OTHER SUPERVISORY PERSONNEL OR ASSISTANCE IN THE CONDUCT OF ANY AVCTIVITY ON OR ABOUT ANY OF THE LAKES WITHIN THE DEVELOPMENT, (2) THE USE OF THE LAKES AND WATER AREAS WITHIN THE DEVELOPMENT BY ANY OF THE RELEASING PARTIES SHALL BE THE SOLE RISK AND EXPENSE OF THE PERSON OR ENTITY USING THE LAKES OR WATERWAYS, AND (3) NEITH DEVELOPER, THE ASSOCIATION OR THE COMMITTEE NOR ANY OF THEIR RESPECTIVE AGENTS, EMPLOYEES, REPRESENTATIVES, SUCCESSORS AND ASSIGNS, SHALL BE OBLIGATED TO TAKE ANY ACTION TO MAINTAIN A SPECIFIC WATER LEVEL FOR ANY OF THE LAKES OR WATERWAYS WITHIN THE DEVELOPMENT.

ARTICLE V

SPECIAL RESTRICTIONS AFFECTING COMMON AREAS

5.1 **Natural Areas.** Certain parts of the Common Area may be designated by the Developer or the Association as "natural" or "open." No structure may be placed on this area without the consent of the Developer, the Association and the Committee.

5.2 **Improvement of Common Areas.** DEVELOPER SHALL HAVE THE RIGHT, BUT NOT THE OBLIGATION, TO IMPROVE THE COMMON AREAS OR ANY PORTION THEREOF WITH SUCH AMENITIES AS DEVELOPER, IN ITS SOLE DISCRETION, MIGHT DEEM APPROPRIATE.

(a) After a total of one hundred (100) homes have been built and sold on the subject premises, developer will construct a swimming pool with adjoining clubhouse for the use and enjoyment of all members. Said swimming pool and clubhouse will be constructed at the expense of the developer and will not be constructed with any funds that have been paid to the homeowners association by any number up to and including the date of construction of said pool and clubhouse.

5.3 **Use of Common Area.** Developer expressly reserves to itself, its successors and assigns, including Parcel Owners, the reasonable use and enjoyment of said Common Areas in a manner not inconsistent with the provisions of this Declaration and subject to such limitations and rules and regulations as might be promulgated by the Association.

5.4 **Common Areas and Facilities; Conveyance to Association.** The Association shall have the right to maintain or help maintain the Common Areas and facilities within the Subject Property which serve the Parcel Owners, regardless of whether the Common Areas and facilities are owned by Developer or have been conveyed to the Association as Common Areas. Developer shall have the right, but not the obligation, at such time or times as may be determined by Developer, in its sole discretion, to convey portions of the Subject Property to the Association as Common Areas.

ARTICLE VI

SILVER CREEK RESIDENTIAL ASSOCIATION, INC.

6.1 **General.** The structure of the Association is contained in its Articles of Incorporation and Bylaws, which should be consulted for a full explanation of the rights and obligations appurtenant to membership in the Association.

6.2 **All Parcel Owners are Members of the Association.** Every Parcel Owner shall, by virtue of such ownership, be a Member of the Association. Membership shall be appurtenant to and may not be separated from the ownership of any Parcel.

6.3 **Maintenance Fund; Assessments.** In order to (i) provide a fund to maintain, landscape and repair the entranceway improvements, streets (except those located within a privately owned parcel), walkways, and other community areas, and in general provide those services important to the development and preservation of an attractive community appearance, (ii) provide a fund to maintain, landscape and repair the Common Areas, and (iii) provide additional funds for purposes as may be deemed appropriate by the Board, the Board each year assess against each parcel owned by a member an annual assessment equal to a specified number of dollars per Parcel. The assessment shall be collected periodically in one (1) advance annual installment and shall be initially fixed at ONE HUNDRED TWENTY DOLLARS (\$120.00) per annum. The annual assessment for the Property shall commence on June 1 of each year and shall be paid in advance. The annual assessment shall be established by the Association in accordance with its rules, regulations and Bylaws. Lots owned by the Developer shall be subject to any assessment by the Association, be it annual, special or individual. In addition to the annual assessment, applicable to that year only or the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of capital improvements upon the Common Area, provided that any such assessment must have the assent and approval of (a) at least fifty-one percent (51%) of purpose and (b) for so long as Developer owns any portion of the Development, the approval of the Developer.

6.4 **Lien.** The assessments set forth in Section 5.3 hereof, together with interest thereon (at such rate as the Board determines) and the costs of collection thereof (including reasonable attorney fees) shall be charged on and shall be a continuing lien (enforceable in the same manner as a mortgage, with power of sale) upon the Parcel against which each such fee, assessment or charge is made.

6.5 **Subordination of Lien to Mortgages.** The lien of any fee, assessment or charge authorized by this Article with respect to a Member's Parcel is subordinate to the lien of any bonafide mortgage; if and only if all fees, assessments and charges levied against the Parcel due and payable on or prior to the date the mortgage is recorded have been paid. The sale or transfer of any Member's Parcel pursuant to a sale under power contained in a mortgage on a Parcel or pursuant to a deed in lieu of foreclosure thereof or pursuant to a judicial foreclosure thereof, shall extinguish the lien for assessments falling due prior to the date of the sale, transfer or foreclosure, but the Association shall have a lien on the proceeds of the sale senior to the equity of redemption of the mortgagor. The foregoing subordination shall not relieve a Member whose Parcel has been mortgaged of the Member's personal obligation to pay all assessments and charges falling due during the time Member is the owner of the Parcel. The Board may at any time, either before or after the mortgaging of any Member's Parcel, 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 the Parcel coming due during the period while the Parcel is or may be held by a mortgagee or mortgagees pursuant to a sale or transfer.

6.6 **Developer's Exemption.** Unless waived in writing by Developer, Developer and any Parcel or other portion of the Subject Property owned by Developer shall be exempt from the payment or levy of any and all assessments by the Board until the occurrence of Termination of Developer Voting Rights.

ARTICLE VII

EASEMENTS

7.1 **General Construction and Drainage Easements.** The Developer plans to develop additional residential subdivisions in the future on property adjacent or in close proximity to the Subject Property. Developer reserves for itself and its successors and assigns an easement for ingress and egress over and across Subject Property as may be necessary for the construction and development of additional residential subdivisions on adjoining property adjacent or in close proximity to the Subject Property. There also is reserved an easement for drainage across the Subject Property as may be required resulting from the topography thereof or of the additional land. Easements for installation and maintenance of utilities and drainage facilities may, but are not required to be, shown on the record map.

7.2 **Inspection Easement.** Developer does hereby establish and reserve for itself, the Association, the Committee and their respective successors and assigns a permanent and perpetual non-exclusive easement over, across, through and upon each Parcel for the purpose of inspecting each Parcel and any dwelling or other Improvement constructed thereon in order to determine compliance with the provisions of this Declaration and to otherwise perform any of their duties or undertake any of the action authorized or permitted to be taken by any of them pursuant to this Declaration.

7.3 **Utility Easements.** Developer does hereby establish and reserve for itself, its successors and assigns, a permanent and perpetual non-exclusive easement over, across, through, upon and under those portions of any Parcel upon which the Developer has reserved an easement, as reflected on the recorded map, plat or other instrument for such Parcel, which easements may be used for the purpose of installing, erecting, maintaining and using above and below ground utility and cable television lines, poles, wires, cables, conduits, storm sewers, sanitary sewers, conveniences, appurtenances and other utilities.

7.4 **Common Areas.** Developer does hereby establish and reserve for itself, its successors and assigns, a permanent and perpetual non-exclusive easement over, across, through, upon and under all portions of the Common Area for the purpose of installing, erecting, maintaining and using thereon above and below ground utility and cable television lines, pipes, poles, wire, cables, conduits, storm sewers, conveniences and other utilities.

ARTICLE VIII

GENERAL

8.1 **Grantee's Acceptance.** The grantee of any Parcel subject to the Declaration, 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, whether from Developer or a subsequent owner of a Parcel, shall accept the deed or other contract upon and subject to each and all of these restrictions, liens, easements and provisions herein contained.

8.2 **Indemnity for Damages.** Each and every Parcel Owner and future Parcel Owner, in accepting a deed or contract for any Parcel subject to this Declaration, agrees to indemnify Developer and the Association from and against (i) any damage caused by the Owner, or the contractor, agent or employees of the Owner, to 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 Developer or the Association, or for which Developer or the Association has responsibility, at the time of such damage, and (ii) any loss, damage, claim or liability that Developer or the Association might suffer, including costs of defense and attorney fees arising out of any breach or violation of the provisions of this Declaration.

8.3 **Severability.** Every one of the provisions and restrictions hereof is hereby declared to be independent of, and severable from the rest of the provisions and restrictions hereof 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, and the invalidity of any one or more of the provisions or restrictions hereof shall in no way affect any of the other provisions or restrictions which shall remain in full force and effect.

8.4 **Developer's Right to Remove Portions of or Add to the Subject Property.** Other provisions herein to the contrary notwithstanding, Developer shall have the right, at any time, to (i) remove from the provisions of this Declaration, the Articles and Bylaws, any portion or portions of the Subject Property, as Developer might determine, in its sole discretion, provided that, at the time of the removal, the portions of the Subject Property removed are owned by Developer, and (ii) add to the provisions of this Declaration, the Articles and Bylaws additional parcels of real property whether presently owned or subsequently acquired by Developer. Any portions of the Subject Property so removed by Developer shall no longer be affected or encumbered in any manner by the provisions of this Declaration, the Articles or the Bylaws. Developer shall have and does hereby reserve unto itself the power and authority to execute and effectuate, without the approval of any other persons or entities, amendments to this Declaration, the

Articles and Bylaws as Developer shall deem appropriate to amend the legal description of the Subject Property and to carry out and enforce the rights reserved unto itself under this Section.

8.5 No Development Scheme. The size, configuration, style, location and any other of the characteristics of any particular Parcels or Improvements thereto shall not in any manner bind or restrict Developer with respect to the characteristics of the development of any other portion of the Subject Property. Developer shall have the right to redesign and relocate the roads, drives and entrances on the Subject Property and to change the size, configuration, style, location and other characteristics of any lots or Parcels to be created within the Subject Property in such manner as Developer deems appropriate.

8.6 Captions. The captions preceding the various sections, paragraphs and subparagraphs of this Declaration are for the convenience of reference only, and none of them shall be used as an aid to the construction of any provision of this Declaration. 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.

8.7 Effect of Violation on Mortgage Lien. No violation of any provision 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 Subject Property; provided, however, that any mortgagee in actual possession, or any purchaser at any mortgagees' or foreclosure sale shall be bound by and subject to this Declaration as fully as any other Parcel Owner.

8.8 Zoning and Similar Restrictions. This Declaration shall not be construed to permit any action or thing prohibited by applicable zoning laws, rules or regulations of any governmental authority, or by specific restriction imposed by any deed or other conveyance. In the event of any conflict, the most restrictive provision shall govern.

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

8.10 Duration and Amendment. The restrictions and provisions contained in this Declaration shall run with and bind the Subject Property, shall inure to the benefit of and shall be enforceable by Developer, the Association, the Committee, and any Parcel Owner, their respective legal representatives, heirs, successors and assigns until the 1st day of June in the year 2025, after which time said restrictions and provisions shall automatically be extended for successive periods of ten (10) years. Except as provided in Section 7.11, this Declaration may not be amended in any respect (except with regard to the addition of other property) except by the execution of an instrument signed by not less than seventy-five percent (75%) of the Parcel Owners, which instrument shall be filed in the Probate Office 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 June 1, 2025, this Declaration may be amended and/or terminated in its entirety by an instrument signed by not less than fifty-five percent (55%) of the Parcel Owners, which instrument shall be filed in the Probate Office of Shelby County, Alabama, or in such other place of recording as may be appropriate at the time of the execution of such instrument.

8.11 Amendment by Developer. Notwithstanding any provision to the contrary, but subject to the next sentence, at all times prior to the occurrence of Termination of Developer Voting Rights, Developer at its discretion may amend any provisions of this Declaration, the Bylaws and the Articles of Incorporation without consent or vote of any Member or other person or entity including, without limitation, amendments intended to satisfy requirements of any governmental agency or mortgage lender to make and accept mortgages on any Parcel. The Developer may not amend any provision of this Declaration, Bylaws, and the Articles of Incorporation (i) in a manner which would adversely affect the rights specifically given in this Declaration to holders of mortgages upon any Parcel without the mortgagee's prior written consent, (ii) to lessen or extend the voting and membership rights of Parcel Owners without the prior written consent of the percentage of Parcel Owners as set forth in Section 7.10, (iii) to except a Parcel from the fees, charges and assessments provided in this Declaration, or (iv) in a manner which would materially and adversely alter a Parcel Owner's right to use the Parcel for residential

purposes. Until the occurrence of Termination of Developer Voting Rights, none of this Declaration, the Bylaws or the Articles of Incorporation may be amended without the prior written consent of Developer. Amendments by the Developer may apply to all of the Subject Property or to any portion thereof.

8.12 Enforcement. In the event of a violation or breach of any provision of this Declaration or any amendments thereto by any Parcel Owner, resident, or employee, agent or lessee of the Parcel Owner or resident, any Parcel Owner, the Association, the Developer, their successors and assigns, or any other party to whose benefit this Declaration inures 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 and provisions, to sue for and recover damages or other dues, or to 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 be a waiver of that party or an estoppel 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 a different violation. Damages alone shall not be deemed adequate compensation for 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.

8.13 Certificate of Violation. In addition to any other rights or remedies available to the Association hereunder or at law or equity, the Association shall have the right to file in the Probate Office of Shelby County, Alabama, a Certificate or Notice of Violation of this Declaration (which violation shall include, without limitation, nonpayment of the fees, assessments or other charges, or failure to comply with architectural guidelines) upon failures of a Parcel Owner to correct a violation of this Declaration within ten (10) days (unless a longer period of time is provided herein) after written notice of the violation has been given by the Association to the Parcel Owner.

8.14 Interpretation by Developer and the Association. The Developer and the Association shall have the right to construe and interpret the provisions of this Declaration, and in absence of 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 this Declaration.

8.15 Assignment by Association. The Association shall be empowered to assign its rights hereunder and its properties to any successor nonprofit membership corporation (herein referred to as the "Successor Corporation") and, upon such assignment the Successor Corporation shall have all the rights and be subject to all the duties of the Association hereunder.

8.16 No Waiver. The failure of any party entitled to enforce any of the provisions of this Declaration 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; provided, however, that approval of Development Plan pursuant to Article II shall be binding on any and all parties as a conclusive determination that the Development Plan are in conformity with this Declaration.

IN WITNESS WHEREOF, this Declaration of Protective Covenants for Silver Creek has been executed by Developer effective this 20TH day of MARCH, 2002.

SILVER CREEK DEVELOPMENT, L.L.C.



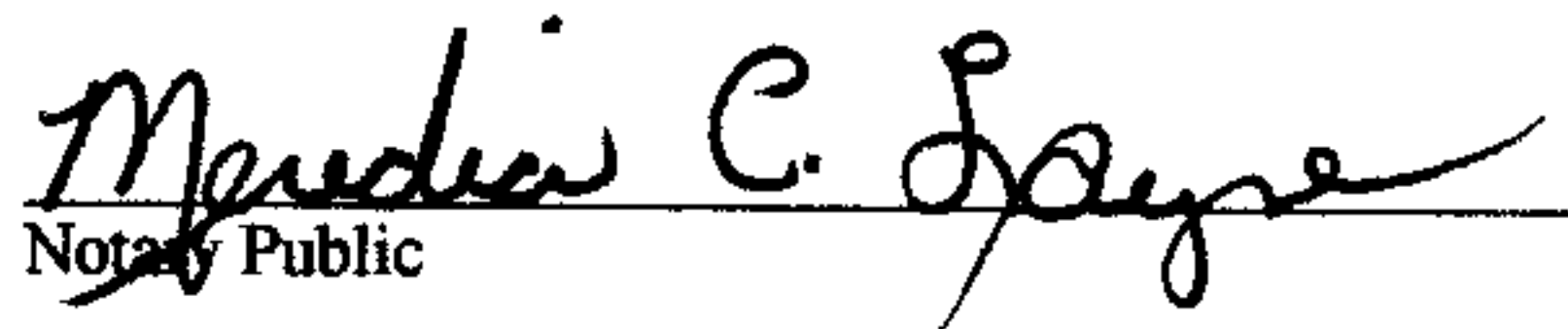
MICHAEL D. GREEN
Authorized Member

STATE OF ALABAMA
COUNTY OF SHELBY

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that MICHAEL D. GREEN, whose name as Authorized Member of SILVER CREEK DEVELOPMENT, L.L.C., an Alabama Limited Liability Company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this 20TH day of MARCH, 2002.

(NOTARY SEAL)


Notary Public

My Commission Expire FEBRUARY 13TH 2003

Inst # 2002-17873

04/17/2002-17873
10:25 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
016 MSB 56.00

16