

STATE OF ALABAMA       )  
SHELBY COUNTY        )

ADDITION TO  
DECLARATION OF PROTECTIVE COVENANTS  
FOR  
EMERALD PARC  
PHASE I, LOTS 33-38

THIS ADDITION TO DECLARATION OF PROTECTIVE COVENANTS will only be applicable to the above Lots 33 - 38, both inclusive, in addition to the Covenants and Declaration of Protective Covenants for Emerald Parc as recorded in the Probate Office of Shelby County, Alabama on April 15, 2002, as Instrument No. 2002-17284, and is made as of this 12 day of September, 2002, by EMERALD PARC, L.L.C., an Alabama limited liability company ("Developer"), and H & T Home Builders, Inc., (the "Additional Lot Owners") declare that the real property hereinafter described is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth (the "Protective Covenants").

WHEREAS, the Developer is presently the owner of all of that certain real property known as Emerald Parc, except for previously conveyed lots which are Lot 11 which is owned by JAW, Inc., Lot 26 which is owned by Danny Curran d/b/a Curran Homes, Lots 4 and 24 which are owned by JDS Homes, Inc., Lot 38 which is owned by H & T Homes Builders, Inc., and Lot 5 which is owned by Larry Kent d/b/a Larry Kent Building Company. All of the lots in Emerald Parc owned by either Developer or Additional Lot Owners are located in Shelby County, Alabama, as shown by the Map and Survey of Emerald Parc, as recorded in Map Book 29, Page 47, (the "Record Map") and Instrument No. 2001-13707 in the Office of the Judge of Probate of Shelby County, Alabama; and

WHEREAS, the Developer and the Additional Lot Owners defined above desire to establish and enforce uniform standards of development quality and to provide for the effective preservation of the appearance, value and amenities of real property herein described and for the maintenance and administration of certain areas thereof which benefit all owners of property therein and, to this end, desire to subject said real property, together with such additions thereto as may hereafter be made, to these Protective Covenants, all of which are for the benefit of the said real property and each owner thereof; and

WHEREAS, the additional covenants, conditions, and restrictions contained herein apply only to Lots 33 - 38, both inclusive, Emerald Parc, Phase I, Shelby County, Alabama.

3.4 Grant and Reservation of Easement and Restrictions With Respect to the Lakes.

(a) Easement to Use the Lakes. Subject to the limitations and restrictions set forth in Section 3.4(b) below and the reservation of the Developer under Section 4.3(c) below, the

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Amber Curran  
100 Wisteria Drive  
Chelsea, AL 35043

Developer hereby grants to each Lake Lot Owner, and his or her immediate Family and any Tenants of a Lake Lot Owner and his immediate Family, and their respective guests and invitees, the nonexclusive right, privilege and easement to use and enjoy the Lakes for recreational purposes, in common with the Developer, its successors and assigns, and all other Lake Lot Owners, the Tenants and their respective immediate Families, guests and invitees. Subject to the provisions of Section 3.4(b) and 3.4(c) below, the easements and right granted pursuant to this Section 3.4(a) are and shall be permanent and perpetual, and are appurtenant to and shall pass and run with title to each Lake Lot or Lake Dwelling. The easements and rights are expressly subject to the rights reserved by the Developer to restrict the use of the Lakes under Section 3.4(b) below and the reservation of the Developer with respect to the use of the Lakes under Section 3.4(c) below.

(b) Limitation and Restrictions Regarding the Lakes. Each Lake Lot Owner and each Tenant of a Lake Dwelling, by acceptance of a deed or other Instrument conveying any interest in a Lake Lot or Dwelling, does hereby agree that the use and enjoyment of the Lakes shall be limited to the rights granted to the Developer in and to the Lakes, under the Lake Easement Agreement between Highland Lakes Properties, Ltd. and the Developer recorded as Instrument #1993-15705 in the Probate Office of Shelby County, Alabama, and any other instrument by which the Developer or the Association may acquire an interest in, or a right to use, any of the Lakes. The use and enjoyment of the Lakes shall also be subject to the following restrictions and limitations.

(i) Swimming Prohibited. Swimming is absolutely prohibited. This lake was not designed or intended for safe swimming. Swimming shall be deemed to include, without limitation, any entry of a person into a Lake whether from the shore, boat or platform and any use of a floating device other than a watercraft that is permitted under (ii) below.

(ii) Watercraft Requirements. No boats or other watercraft shall be permitted in or on the Lakes without prior approval of the Association. Such approval shall be in the sole discretion of the Association and shall be evidenced by an emblem or other designation from time to time adopted by the Association attached to the permitted boat or other watercraft. No boats are permitted on Lake after dark. All boats must be removed from Lake prior to dark. The criteria for the approval of boats or other watercraft shall be subject to the following limitations:

(A) No boats or other watercraft having a length of more than sixteen feet shall be permitted; and

(B) No boats or other watercraft powered by electric trolling motors having a maximum thrust of more than 50 pounds shall be permitted. No boats, jet skis, or other watercraft powered by gasoline or diesel engines shall be permitted; and

(C) No sailboats, wind surfboards or other vessels powered by wind shall be permitted.

(D) No boats or other watercraft shall have a hull made out of hard materials such as wood, fiberglass, aluminum and steel. No boats, rafts or other watercraft that are inflatable shall be permitted.



(iii) Piers and Launches. No piers, jetties, storage facilities, launches or other similar structures shall be constructed or located so that they extend into any portion of the Lake; provided that the Association may approve improvements for boat storage and access to the Lakes on any Lake Lot or Lake Dwelling, if substantially all of such improvements are located on the Lake Lot and do not unreasonably interfere with the natural buffer referred to in subparagraph (vi) below.

(iv) Fishing. Fishing shall be permitted subject to the following limitations. The Lakes have been designed for fishing for large mouth bass and are intended to be professionally managed to provide an environment that is conducive to the spawning and growth of large mouth bass. Fishing will be allowed only with artificial bait. No person shall transfer any fish to and from the Lakes. Fishing with live bait is absolutely prohibited.

(v) Guests. Subject to the provisions of Section 3.4(c) below, the use of the Lakes shall be permitted for only Lake Lot Owners, Tenants of Lake Lots, and their respective immediate Families and guests; provided that guests shall not be allowed to use any of the Lakes unless they are accompanied by the Lake Lot Owner, Tenant, or a member of their respective immediate Families on the Lake when fishing or otherwise using the Lake from a Lake Lot, boat or Common Area. Guests shall only be allowed to use the Lake if the Lot Owner, Tenant, or an immediate Family Member of the Lot Owner or Tenant is present.

(vi) Natural Buffer. Each Lake Lot shall have a natural undisturbed buffer extending 30 to 50 feet from the normal water line of the Lake along the shore of the Lake Lot as determined by the Association unless otherwise specifically indicated on the Record Map for the Sector. Such natural buffer shall be free of any improvements except for boat storage and access facilities that are permitted hereunder and under the applicable Sector Covenants.

(vii) Hazardous Materials. No products that are listed on any current stipulated hazardous or toxic materials list of the Environmental Protection Agency, or the Alabama Department of Environmental Management or any other Governmental Agency shall be stored or used on any Lot, except that gasoline and other petroleum products, pesticides, and fertilizers may be stored and used on a Lot for the purpose of normal and routine maintenance of grounds and the normal routine construction, repair, maintenance and operation of Dwelling and other improvements located on a Lot, including construction materials which are stored and/or used during construction, if, in the opinion of the Board, such products or items are not stored or used in quantities or in a manner which are likely to endanger the Lakes. Notwithstanding the foregoing, no pesticides or other toxic, hazardous or harmful chemicals shall be used whatsoever within 50 feet of a Lake. Any such chemicals used or applied more than 50 feet from the Lake shall be so used and applied to prevent their spread or dissemination into the Lake.

(viii) Only one boat per Lot Owner or Tenant is allowed on the lake at a time.

(ix) Any boat on the Lake must have a membership sticker affixed in plain view at all times.

(x) Developer reserves the right to add or modify these covenants at any time up until the Homeowners Association is formed.

(c) Reservation by Developer.

(i) Developer does hereby reserve for itself, its successors and assigns, the right to promulgate and enforce in accordance with this Declaration rules and regulations regarding the use of the Lakes, including without limitation, restrictions and limitations regarding boat traffic and identification, and method, time and location for fishing, and other matters reasonably related to the use of the Lakes as herein contemplated.

(ii) Developer does hereby reserve for itself and its successors and assigns and does hereby grant to Rodney E. Davis, his heirs, executors, and assigns, the right to use the Lakes and the right, but not the obligation, to grant to other persons a nonexclusive right and license to use the Lakes; provided that such persons shall only have the right to use the Lakes at any one time; the use of the Lakes by such persons shall be subject to the restrictions and limitations on the use of the Lakes as herein set forth and the rules and regulations promulgated by the Developer with respect to the use of the Lakes.

(iii) Developer hereby reserves the right to grant a nonexclusive right and license to use the Lakes to certain designated persons in connection with events promoting the Development and/or the sale of Lots and Dwellings therein; provided that the Developer shall not grant such right and license in connection with more than two promotional events in any twelve month period, and such promotional event shall not unreasonably interfere with the right of the Lake Lot Owners to use the Lakes.

(iv) Notwithstanding the provisions of subparagraphs (ii), (iii), and (iv), the Developer reserves for itself and its successors and assigns the right, but not the obligation, to modify the easement herein granted to provide that the right to use any or all of the Lakes as herein provided shall be vested exclusively in the Lake Lot Owners whose Lake Lots or Lake Dwellings have at least one boundary abutting the Lake.

(d) Liability for Violation of Restrictions. In the event that an Owner or Occupant of a Lot or Dwelling violates any of the restrictions and limitations set forth in subparagraph (b) above, and such violation causes damage to any Lakes or the fishing condition thereof, such Owner shall be liable to the Association for the cost of curing the damage to the Lake caused by such violation which may include, without limitation, the cost of draining and restocking the Lake if recommended by a professional consultant. In the event that any such violation causes personal injury to any person or to the property of any person, the Owner shall indemnify and hold the Association and/or the Developer and their respective directors, officers, employees, successors and assigns, harmless from and against any liability the Association may have to such person to the extent that insurance proceeds available to the Association, if any, are not sufficient to satisfy any such liability.

(e) Duty of the Association and the Developer. The easements for the use of the Lakes granted hereby shall be used solely for non-commercial recreational purposes and the responsibility of Developer and the Association and their respective successors and assigns with respect to the Lakes for liability for injury or damage to persons (including death) or property is intended to be limited by Section 35-15-1, et seq., of the Code of Alabama 1975 (the "Statute"). However, in the event the Statute is deemed inapplicable to the Developer and/or the Association and their respective



successors and assigns with regard to the Lakes, any person by his use of the Lakes pursuant to the easement granted hereunder or otherwise, shall be deemed to have constructively agreed that the Developer and/or the Association shall have no duty of care to keep the Lakes safe for entry and use by such persons, or to give any warning of hazardous conditions, use of structures or activities on or about the Lakes; and the Developer and the Association and their respective agents, employees, officers and directors and their respective successors and assigns shall have no liability for any injury to persons or property caused by any act or omission of Developer or the Association or any other person relating to or arising out of the use of the Lakes by any person.

3.5      **Reservation of General Access Easement.** Developer does hereby establish and reserve for itself, each Sector ARC, the Association and their respective agents, employees, representatives, invitees, successors and assigns, a permanent and perpetual nonexclusive easement appurtenant over, across, through and upon each Lot or Dwelling for the purpose of providing ingress to and egress from each Lot and Dwelling for (a) inspecting each Lot and Dwelling and any improvements thereon in order to determine compliance with the provisions of this Declaration and/or applicable Sector Covenants, and (b) the performance of the respective duties of Developer, the Sector ARC and the Association hereunder, including, without limitation, taking any action required or permitted to be taken by Developer, the Sector ARC and the Association pursuant to any of the terms or provisions of this Declaration and/or the Sector Covenants; provided, however, that upon completion and occupancy of any Dwelling, then except in the event of emergencies, the foregoing easement shall be utilized only during normal business hours and then, whenever practical, only upon advance notice to the Owner or Occupant of such Lot or Dwelling directly affected thereby.

3.6      **Reservation of Easements With Respect to Lakes.**

(a)      **Easement Upon Common Areas and Lakes.** Developer does hereby establish and reserve, for itself, each Sector ARC, the Association and their respective agents, employees, representatives, invitees, successors and assigns, a permanent and perpetual nonexclusive easement appurtenant over, across, under, through and upon all of the Common Areas and Lakes for the purpose of (i) constructing Dwellings and other improvements in and to any Lots and Dwellings, (ii) installing, maintaining, repairing and replacing any other improvements to the Property or to the Common Areas or Lakes and (iii) doing all other things reasonably necessary and proper in connection therewith; provided, however, that in no event shall Developer have any obligation to undertake any of the foregoing. In addition to the other rights and easements established and reserved herein and regardless of whether Developer continues to own a Lot or Dwelling within the Development, Developer hereby establishes and reserves for itself and its successors and assigns, a permanent and perpetual, nonexclusive easement to have access, ingress to and egress from and the right and privilege to use and enjoy the Common Areas and all improvements thereon for such purposes as Developer deems appropriate; provided, however, that Developer shall not exercise such rights so as to unreasonably interfere with the rights of the Owners to use the Common Areas.

(b)      **Changes in Lakes.** Developer does hereby establish and reserve unto itself and its successors and assigns the permanent right to change, modify and realign the boundaries of any of the Common Areas, the Lakes, and any Lots or Dwellings owned by Developer. Developer further reserves the right, but shall not have any obligation, to convey by quitclaim deed to the Association

at any time and from time to time any portion of the Property or any improvements thereto to be utilized as Common Areas or Lakes, as Developer, in its sole discretion, may determine.

3.7 Reservation of Easement for Utilities. Developer does hereby establish and reserve for itself and the Association and their respective successors and assigns, a permanent and perpetual nonexclusive easement appurtenant over, across, under, through and upon all portions of the Lakes, and all Lots and Dwellings which are reasonably necessary for the purpose of installing, erecting, replacing, relocating, maintaining and operating master television and/or cable systems, security and similar systems and all utilities necessary or convenient for the use of any portion of the Development, including, without limitation, publicly or privately owned and operated electrical, natural gas, telephone, water and sewer services, storm drains and sewers, drainage systems, retention ponds, basins, dams, spillways and facilities, lines, and pipes, conduits, equipment, machinery and other apparatus and appurtenances necessary or otherwise reasonably required in order to provide any utility service to any portion of the Development. The easements established and reserved herein shall include the right to cut and remove trees, undergrowth and shrubbery, to grade, excavate or fill and to otherwise take all other action reasonably necessary to provide economical and safe installation, maintenance, repair, operation and replacement of all such utility services and the systems, equipment and machinery used to provide the same. The rights herein reserved by the Developer and the Association shall include, without limitation, the right to grant easements to the providers of utilities for the purposes herein established, and each of the Owners hereby appoint the Developer and/or the Association, as the case may be, irrevocably, as their attorney in fact, for the purpose of executing such documents as may be necessary and appropriate in connection with the granting of such easements. Notwithstanding anything provided in this Section 3.7 to the contrary, (i) the utilization of any of the easements and rights established and reserved pursuant to this Section 3.7 shall not unreasonably interfere with the use or occupancy of any Dwelling situated on any Lot, and (ii) Developer shall use good faith efforts to attempt to cause any utility company or other supplier or provider of any utility service may utilize any of the easements and rights reserved and established pursuant to this Section 3.7 to take reasonable action to repair any damage caused by such utility company or other supplier or provider of such utility service during the exercise of any rights established and reserved herein.

4. Action of Developer. This Amendment and the easements granted herein are made pursuant to the reservation of rights for the Developer as set forth in Section 3.4(c) and Section 10.2 of the Master Covenants. The Developer hereby ratifies, confirms and approves the Master Covenants as amended hereby, and the Master Covenants as so amended shall continue and remain in full force and effect.

IN WITNESS WHEREOF, the undersigned have duly caused this Declaration to be executed on this 12 day of September, 2002.

**[SIGNATURES ON FOLLOWING PAGE]**



H & T HOME BUILDERS, INC.

By: Bill Hamm  
Bill Hamm, President

EMERALD PARC, L.L.C.

By: Rodney E. Davis  
Rodney E. Davis

STATE OF ALABAMA  
SHELBY COUNTY

I, the undersigned, a notary public in and for said County in said State, hereby certify that Bill Hamm, whose name as President of H & T Home Builders, Inc., an Alabama corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation in his capacity as President.

Given under my hand and official seal, this the 12 day of September, 2002.

Paula Head  
Notary Public

STATE OF ALABAMA  
SHELBY COUNTY

I, the undersigned, a notary public in and for said County in said State, hereby certify that Rodney E. Davis, whose name as Member of Emerald Parc, 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 said instrument, he, as such Member and with full authority, executed the same voluntarily for and as the act of said limited liability Company in his capacity as Member.

Given under my hand and official seal, this the 12 day of September, 2002.

Paula Head  
Notary Public