

STATE OF ALABAMA )  
SHELBY COUNTY )

**First Amendment to**  
**DECLARATION OF PROTECTIVE COVENANTS**  
**BEAR CREEK RIDGE**  
**SECTOR II**

Recorded in **Instrument #1999-16693**

(The Protective Covenants previously recorded in Instrument #1999-16693 shall also be referred to below as the Original Protective Covenants)

KNOW ALL MEN BY THESE PRESENTS, that:

WHEREAS, the undersigned, Bear Creek Ridge L.L.C., an Alabama Limited Liability Company ("Declarant"), is the owner of **Bear Creek Ridge, Sector II**, as recorded in **Map Book 25, Page 80**, in the Office of the Judge of Probate of Shelby County, Alabama (the "Property" or the "Lots"); further described as:

**Lot(s) 20, 21, 22, 23, 24, 25, 26, 27, 28, and 29 of Bear Creek Ridge Sector II**, recorded in the office of the Judge of Probate, Shelby County, Alabama; and

NOW, THEREFORE, the Declarant does hereby expressly adopt the following Protective Covenants, conditions and limitations for **Lot(s) 20, 21, 22, 23, 24, 25, 26, 27, 28, and 29 of Bear Creek Ridge Sector II**, only, of the aforementioned said subdivision, to-wit:

That each of the aforementioned Lot(s) located in said subdivision shall be and the same are hereby subject to the following conditions, limitations and restrictions, which shall run with the land.

The following amendments are hereby made a part of, and in addition to, those Protective Covenants recorded in Instrument #1999-16693. All other clauses in said Protective Covenants shall remain in full force and effect, as originally recorded in the aforementioned Instrument #1999-16693.

**I. Exclusive Residential Use and Improvements, Clauses "B", "G", "J", "N" and "O".**

**B. Structure and/or Improvements Height Restrictions.** No structure shall be erected, altered, placed or permitted to remain on any residential building Lot other than detached residential family dwellings (not to exceed two (2) stories, and is no more than a maximum of thirty-five feet (35') in height), and a guest house, detached private garage, and other outbuildings incidental to and necessary for property residential use of the Lot. Any and/or all structures must follow size restrictions stated in clause "A" of the Original Protective Covenants.

**Lot(s) 25, 26, 27, 28 and 29 shall be restricted to having only one (1) story or one and one-half story homes constructed upon them.**

**G. Architectural Control Committee Must Approve Plans.** All buildings, walls (including, but not limited to: retaining walls, decorative walls, etc.), fences, etc. constructed within this subdivision shall be approved by Architectural Control Committee (ACC) prior to beginning any construction. The approval by Architectural Control Committee of any particular building materials shall be on a case-by-case basis. Approval for the construction of any building(s), improvement(s) or a portion thereof, building design, or the use of any particular material(s), shall in no way be deemed acceptance that this type of construction, material, and/or design will be allowed on any other home or building within this Subdivision.

**J. Exterior Construction.** The front and sides of all homes must have a brick veneer, stone or other material approved by Architectural Control Committee. **Lot(s) 25, 26, 27, 28 and 29 must have brick veneer, stone or other approved material on all four sides of any structure. The particular material must be approved prior to beginning any construction.**

CLAYTON T. SWEENEY, ATTORNEY AT LAW



N. **Yards.** All yards in front of homes are to be sodded and side yards and back yards must be either fully sodded, seeded, sprigged, or a combination, (except corner lots, where, any side yard(s) which adjoin a paved road must be sodded). A landscape plan which shows total area to be sodded, and any area(s) which shall be seeded, sprigged (or a combination of seeded and sprigged method are to be used), must be indicated on plans submitted to and approved by the Architectural Control Committee prior to beginning any construction. Required sodding, seeding and sprigging must be completed prior to occupancy of any home. All areas whether sodded, seeded, sprigged or on which a combination of methods (as dictated by the original Protective Covenants or any amendments thereto) shall be properly maintained by Owner.

It shall be the sole responsibility of Lot Owner to remove from lot any materials including, but not limited to, any building materials or materials related thereto, any dirt, vegetation, tree(s), limb(s), roots, tree trunk(s), etc. from Lot Owner(s) lot and to not deposit any such items on any other Lot nor any adjacent property(s). Any Lot Owner who violates this requirement shall pay punitive damages to Declarant, Developer, its heirs and/or assigns a fee of twenty-five dollars (\$25) per day for the duration of the violation. Lot Owner(s) in violation, as stated herein, shall be fully responsible for all cost(s) related to the removal and all court cost(s), if any, to enforce this restriction. In addition to the above stated cost(s) any Lot Owner(s) who violates this restriction shall incur a per diem interest charge on the unpaid balance, based on a simple interest rate of eighteen percent (18%), beginning on the third day after being notified (either by certified mail or by Declarant, Developer, its heirs and/or assigns) of such violation. In the event of any violation as stated herein, the Declarant, Developer, its heirs and/or assigns reserves the right to file a lien against such Lot Owner and aforementioned fee(s), punitive damages and interest charges shall continue to incur until such time as they are paid in full.

O. **No Radio Towers and/or Satellite Antennas.** No radio towers will be permitted. No satellite dish antennas larger than eighteen (18") inches in diameter will be permitted, and those satellite antennas eighteen (18") inches or smaller in diameter will **only be permitted in areas which are not visible from any road(s)** within Bear Creek Ridge subdivision.

## **II. General Requirements, Clauses "C", "H", "L" and "Q".**

C. **Animals and Pets.** No animals, livestock, or poultry of any kind shall be raised, bred or kept for commercial purposes on any lot. Dogs, cats or other household pets may be kept provided they are not kept, bred or maintained for any commercial purposes (and in accordance with the below exceptions). Exceptions: No animal(s), including but not limited to dogs, cats or other household pets, shall be permitted to be kept on any premises by any Lot Owner or occupant of any residence, if such animal is deemed to be, or perceived to be, a nuisance or threat to the safety of others (This includes, but is not limited to: Pit Bull(s), Rottweiler(s), Exotic animal(s), Wolf Hybrid(s) or other similar types of dogs etc. which are more prone to aggressive behavior). Architectural Control Committee shall have the sole discretion to determine if any animal is a nuisance or threat as described in this paragraph. Under no circumstances shall any Lot Owner allow more than a maximum of four animals to be kept on any particular Lot and/or residence in Sector II of Bear Creek Ridge. In the event there is any question as to the suitability and/or compliance of any Lot Owner(s) with this clause, Declarant, its managing member, its heirs and/or assigns shall have the sole authority to make that unilateral decision which shall be binding on all Lot(s) stated herein. The penalty or fee for such violation shall be twenty-five (\$25) dollars per diem payable until such time as violation is mitigated. Declarant, its heirs and/or assigns reserves the right to have such animal(s) removed from any Lot(s), at Lot Owner(s) sole expense. An eighteen (18%) percent per annum interest rate shall be added to the cost of removing any such animal(s) until such time as Lot Owner(s), who are in violation of this clause, fully satisfy all removal cost(s), pay all court cost(s) of all parties, and fully satisfy all damage, penalty and/or punitive fees stated herein.

H. **Construction Completion in a Timely Manner.** Once construction of any residence has begun, work thereon is to be pursued diligently and continuously and must be completed within twelve (12) months. Any construction not completed within twelve (12) months, **from the earlier date of either the issuance date of a building permit for the Lot in question or the 1<sup>st</sup> day that any excavating takes place**, shall be in violation of these Protective Covenants and thus the Lot Owner(s) shall be required to pay non-refundable punitive damages to Declarant, its heirs, assigns, and/or successor(s) the sum of **one hundred twenty-five dollars (\$125.00) per day, due and payable, commencing on the 1<sup>st</sup> day Lot Owner(s) is/are not in compliance with completion as described and set forth in the Protective Covenants recorded in Instrument #1999-16693.**



Any and/or all punitive damages amount(s) paid by Lot Owner(s) will in no way relieve Lot Owner(s) from being obligated or required to fully complete construction, immediately. For construction to be considered complete, a Certificate of Completion with the Right to Occupy is required from all proper County building inspector(s).

**L. Motor Homes, Boats, Etc. Restrictions.** No motor vehicles, man-made object(s), or offensive object(s) (as determined by Declarant, its heirs, and/or its assigns, at Declarant's, its heirs', and/or its assigns' sole discretion) shall be allowed to be kept or stored within any of the aforementioned setback areas along any of the property lines or within visibility of an adjacent residence or from any street. The aforementioned items in the previous sentence include, but are not limited to: motor homes, boats, butler (metal or corrugated metal) buildings, building materials, satellite dish(s), propane or any other type storage tanks, and non-working vehicles of any type. Any and all of these must be no closer to any interior property line, or front property line, than thirty feet (30') and must be completely screened off from view of any adjoining Lot Owner(s) by way of perennial evergreen shrubs, bushes, trees or building materials of size, quality, and quantity acceptable to the sole discretion of the Architectural Control Committee and/or the Declarant, its heirs, and/or assigns. Any Lot Owner(s) in violation of this Clause ( Clause "L") shall pay a penalty of **twenty-five dollars (\$25.00) per day** to Declarant, its heirs, and/or assigns until Clause "L" is fully complied with.

**Q. Lot Owners Fee (LOF):** Each Lot Owner by acceptance of a deed to a lot is deemed to covenant and agree to pay an annual Lot Owners Fee (hereafter known as "LOF") as herein provided. The annual LOF together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the lot against which each such charge is made. Each such charge, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of such property at the time when the charges became due. The personal obligation for delinquent charges shall pass to his successor in title. Every Lot Owner within Sector II of Bear Creek Ridge must pay an annual Lot Owners Fee of **three hundred dollars (\$300.00) per year**, due and payable no later than the 5th day of each January for each and every Lot (except Developer, Declarant, its heirs and/or assigns shall be exempt from such payments to the extent that Developer, Declarant, its heirs and/or assigns shall pay a maximum of fifty dollars (\$50) per Lot per year) in Sector II. Any payment of LOF which is not received in the office of Bear Creek Ridge, L.L.C., currently located at 2820 Columbiana Road, Suite 210 Birmingham, AL 35216 by January 5<sup>th</sup> each year shall be in violation of this clause of the Protective Covenants and subject to penalties, punitive damages, late fees, liens, and any other method described in any applicable part of these Protective Covenants. LOF shall be paid to an account setup by Declarant, its heirs, and/or assigns. Purpose of said LOF shall include, but not be limited to, installation and/or maintenance of common amenities within Bear Creek Ridge - the entrance to Bear Creek Ridge subdivision including, but not limited to, sign(s), any subdivision entrance gate(s) or attachments thereto, plantings, electrical, water lines or water usage expenses, paying charges and/or fees due to Alabama Power Company and any of its successors for electrical service and/or maintenance of street lights and/or street signs. Additionally, LOF may be used for maintenance and/or repairs to any street(s) and/or any improvements associated with the street(s). The LOF shall remain in full force and effect, even in the event the streets within Bear Creek Ridge subdivision are dedicated to a county or city government, unless the required number of Lot Owners as required in these Protective Covenants vote to reduce this sum. Under no circumstances shall any vote reduce the amount or stop the aforementioned maintenance fee from being required until any and/or all outstanding contracts including, but not limited to: 1) Alabama Power Company for street light(s) (currently approximately \$50 per month), 2) any water authority, or 3) any landscape contracts, etc. have completed, fully satisfied and/or expired or have been mutually agreed upon to be terminated by the Developer, Declarant, its heirs and/or its assigns and all of the respective company(s).

LOF shall constitute a lien upon any and/or all Lot(s), enforceable by an appropriate proceeding at law or equity and subject to punitive damages, fees, and interest charges (eighteen percent (18%) simple interest) if not paid in full within one week of 5th day of January each year.

**Developer, Declarant, its heirs and/or its assigns shall have the right at its sole discretion to use any or all monies paid into the LOF account, for any and/or all of the above stated purpose(s), use(s) or any other related item(s) as deemed necessary by Developer, at Developer, Declarant, its heirs and/or its assigns sole discretion.**

Furthermore, Declarant, Developer, its heirs and/or assigns shall not be required to render an accounting of income and expenses during other than a minimal amount which shall be limited to showing checks paid for outside services and any such accounting shall be limited to one



time per calendar year, and only when requested by more than fifty percent (50%) of all Lot Owners within Bear Creek Ridge subdivision.

### **III. Architectural Control Committee and Plan Approval**

A. The Architectural Control Committee (the "Committee") is composed of James R. Gardner, as Managing Member of Bear Creek Ridge L.L.C. James R. Gardner, as Managing Member of Bear Creek Ridge L.L.C. shall remain the sole member of the Committee until such time as he, his heirs, and/or assigns designate a successor or successors, which may occur at anytime that he or they unilaterally decide to do so. Neither the member(s) of the Committee, nor its designated representative(s), shall be entitled to any compensation for services performed pursuant to these covenants.

Furthermore, the setback line(s) for building on any one or more of the Lots, in Sector II, may only be modified from the original setback line(s), as stated in the original Protective Covenants, for Sector II, by and only by the Developer, its heirs and/or assigns on a case-by-case basis. Approval of any such modification(s) must be in writing and notarized, prior to the beginning of any construction on any Lot requiring said modification. Approval for any setback modification(s) shall only apply to the specific Lot(s) which are approved, in writing, and shall be granted specific setback modification(s) at the sole discretion of Developer, its heirs and /or assigns. Allowing or granting such modification(s) on any one or more Lot(s) shall in no way constitute or grant any such privilege(s) or right to any other Lot Owner(s) for the granting or modification(s) requested by any other Lot Owner(s) for any modification(s) nor shall Developer, its heirs and/or assigns be in any way indebted nor required to grant such approval(s) on any other Lot(s).

**Every Lot is sold "AS-IS", buyer agrees to release Seller from all liability and not just liability for breach-of-warranty claims.**

**The Protective Covenants and restrictions contained herein (as well as the Original Protective Covenants) are for the benefit of all Lot Owner(s) within Bear Creek Ridge subdivision and the Declarants interest and benefit, as Developer, Lot Owner and to protect Developers interest in any adjacent, contiguous, surrounding and/or nearby property(s).** If any person shall violate or attempt to violate any of these protective covenants and restrictions, it shall be lawful for the Undersigned, or any person or persons owning any Lot in the subdivision to begin prosecute proceedings at law for the recovery of damages against such violators or those persons or companies attempting to violate any these protective covenants or restrictions; or to maintain a proceeding in equity against such Lot Owner(s), violator(s), person(s) or companies attempting to violate any these protective covenants or restrictions, however that the remedies contained in this paragraph shall be construed as cumulative of all other remedies now or hereafter provided by law.

THERE SHALL BE A FEE OF TWENTY-FIVE DOLLARS (\$25.00) PER DIEM, PER VIOLATION, WHERE NO SPECIFIC FEES HAVE BEEN SET AS PENALTIES FOR VIOLATIONS OF ANY OF THE AFOREMENTIONED PROTECTIVE COVENANTS. THIS FEE SHALL BE PAID TO DECLARANT, ITS HEIRS, AND/OR ASSIGNS UNTIL SUCH TIME AS LOT OWNER(S) ARE NO LONGER IN VIOLATION. THE FEE SHALL BEGIN TO ACCRUE ON THE THIRD CALENDAR DAY FROM THE DAY DECLARANT, DEVELOPER, ITS HEIRS AND/OR ASSIGNS NOTIFIES SAID LOT OWNER(S) BY EITHER CERTIFIED MAIL OR BY DIRECT COMMUNICATION, WHICH EVER OCCURS FIRST. IN THE EVENT OF NOTIFICATION BY CERTIFIED MAIL, THE FEE SHALL BEGIN ON THE THIRD DAY FROM THE DATE THE CERTIFIED MAIL IS POST-MARKED AND MAILED TO LOT OWNER(S) OF RECORD MAILING ADDRESS, AS ON FILE IN SHELBY COUNTY TAX COLLECTORS OFFICE, DICTATING WHERE THE TAX NOTICES ARE TO BE MAILED. ANY COURT COSTS AND/OR ATTORNEY FEES TO CAUSE COMPLIANCE, ARE IN ADDITION TO THIS PENALTY FEE AND SHALL BE PAID BY ANY LOT OWNER(S) WHO ARE FOUND TO BE IN VIOLATION OF ANY OF THESE PROTECTIVE COVENANTS.

**Colors.** Exterior colors of homes, walls, fences, lamp posts, window trim, mailbox posts, etc. and including all common area items and accessories, i.e. entrance walls, lamp posts, park benches, etc., must be approved in writing by the ACC or Developer, and this restriction shall apply to repainting or coloring as well as initial colors except once approved the repainting or coloring in the same color does not require re-approval.



**Destroyed or Damaged Structures.** Any dwelling or other structure on any Lot in the subdivision which may be destroyed in whole or in part for any reason must be rebuilt within one year. All debris must be removed and the Lot restored to a slightly condition with reasonable promptness provided that in no event shall such debris remain on any Lot in excess of 30 days.

Fences must be installed and maintained in a professional and good and workmanlike manner and must be installed and maintained straight, true, plumb and level.

**Basketball Goals.** Basketball goals or hoops shall not be placed, used or maintained either adjacent to any roads in Bear Creek Ridge subdivision (with the street pavement as the court) or in front of any residence.

**Term.** These covenants shall run with the land and shall be binding on all parties and all persons claiming under them for a period of fifty (50) years, these covenants shall be automatically extended for successive periods of ten (10) years unless a majority of the then current Lot Owner(s) sign and record an instrument revoking or altering these covenants in whole or in part.

**Other Property(s) Owned By Declarant.** No Lot Owner(s), shall trespass upon, hunt, camp, have campfire(s) or bonfire(s), operate any recreational vehicle(s) on or otherwise disturb or interfere with other property owned by Declarant, Developer, its heirs and/or assigns, nor permit any of their relative(s), guest(s), associate(s), agent(s), contractor(s), subcontractor(s) or servant(s) to do any of the aforementioned upon said land, or any portion thereof. This prohibition specifically includes all Lots in Bear Creek Ridge subdivision owned by Declarant, Developer, its heirs and/or assigns and all property adjacent or contiguous to the developed Lots in Bear Creek Ridge, which are owned by Declarant, Developer, its heirs and/or assigns. Only in the event that written permission is obtained directly from Declarant, Developer, its heirs and/or assigns prior to entering upon any of the aforementioned Lot(s) or contiguous property shall such access be permitted and/or acceptable. Only written approval by Declarant, Developer, its heirs and/or assigns shall be deemed acceptable and any person(s) given said written approval must keep and have that approval in their possession while on the property(s), or they shall be in violation of this covenant.

The intent of this covenant is to protect the interest of Declarant, Developer, its heirs and/or assigns from damage to their respective property(s) and liability in the event of injury. Any Lot Owner(s) who are in violation or permit such violation, by their relative(s), guest(s), associate(s), agent(s), contractor(s), subcontractor(s) or servant(s) as stated herein, shall be fined one hundred dollars (\$100) for the first offense and five hundred dollars (\$500) for each additional offense. These fines shall be claims against the Lot Owner(s) and their property, for such violation(s) by Lot Owner(s), their relative(s), guest(s), associate(s), agent(s), contractor(s), subcontractor(s) or servant(s) as stated herein. In addition to the aforementioned fines, Lot Owner(s), their relative(s), guest(s), associate(s), agent(s), contractor(s), subcontractor(s) or servant(s) who violate this covenant shall be liable for any damage(s) upon said property and held solely liable for any damage or injury caused to them, any of their relative(s), guest(s), associate(s), agent(s), contractor(s), subcontractor(s), servant(s) or to anyone who is affected by their action(s). Said Lot Owner(s), their relative(s), guest(s), associate(s), agent(s), contractor(s), subcontractor(s) or servant(s) shall hold harmless Declarant, Developer, its heirs and/or assigns from any claims whatsoever as a result from any violation, or related incident, of this covenant. These fines shall be due and payable upon any such violation. In the event any Lot Owner(s) in violation do not pay said fine within three business days from the date of the violation, then said Lot Owner(s) shall be liable to Declarant, Developer, its heirs and/or assigns for attorney fee(s), full payment, interest (at a simple interest rate of eighteen percent (18%)) and cost of collection(s) including reasonable attorney(s) fee(s) and court cost(s). Declarant, Developer, its heirs and/or assigns reserve the sole unilateral right to place a lien against any Lot Owner(s) in violation of this clause and/or any other violated covenant in these and/or the Original Protective Covenants.

Declarant, Developer, its heirs and/or assigns failure to or waiving its right to enforce any of these covenants, or a portion thereof, against any violator shall in no way be construed that the action was acceptable nor that the Declarant, Developer, its heirs and/or assigns will agree to do the same for either that same violator or anyone else. All of these covenants will continue to be enforceable and do hereby remain in full force and effect.

Any and/or all fee(s), charges, costs, or expense(s) and any related interest charges, which become past due and Lot Owner refuses to immediately pay, mentioned herein shall constitute

a lien against upon the Lot, enforceable by an appropriate proceeding at law or equity. Any fees, expenses, penalties, fines, punitive damages, compensation or otherwise paid sums related to these covenants and their enforcement shall in no way be considered an agreement to allow any entity paying such fees etc. from continuing to violate any of these covenants.

Anyone violating any of these Protective Covenants shall still be required to come into compliance with these Protective Covenants, no matter how much violator has paid in compensation for violating said Protective Covenants including, but not limited to, cases where a cap on punitive damages is mentioned in these Protective Covenants.

None of the covenants contained herein, nor the fee(s) or penalties associated with them shall prevent Declarant, Developer, its heirs and/or assigns from pursuing additional relief and judgement from any federal, state, county and/or city law(s) against trespassing or damaging property of others.

**Every one of the restrictions and consents herein are hereby declared to be independent of, and severable from the rest of the restrictions and of each of the other restrictions and from any combination of any other restrictions in and of this instrument. Invalidation by any court of any restriction or combination of any restrictions in this instrument, on any Lot(s), shall in no way affect any of the remaining restrictions of this instrument, which shall remain in full force and effect.**

IN WITNESS WHEREOF, Bear Creek Ridge L.L.C., has caused this Declaration of Protective Covenants to be executed this the 7 th day of November, 2002.



BEAR CREEK RIDGE L.L.C.  
JAMES R. GARDNER  
As Managing Member,  
Declarant and Developer of  
Bear Creek Ridge Subdivision

STATE OF ALABAMA

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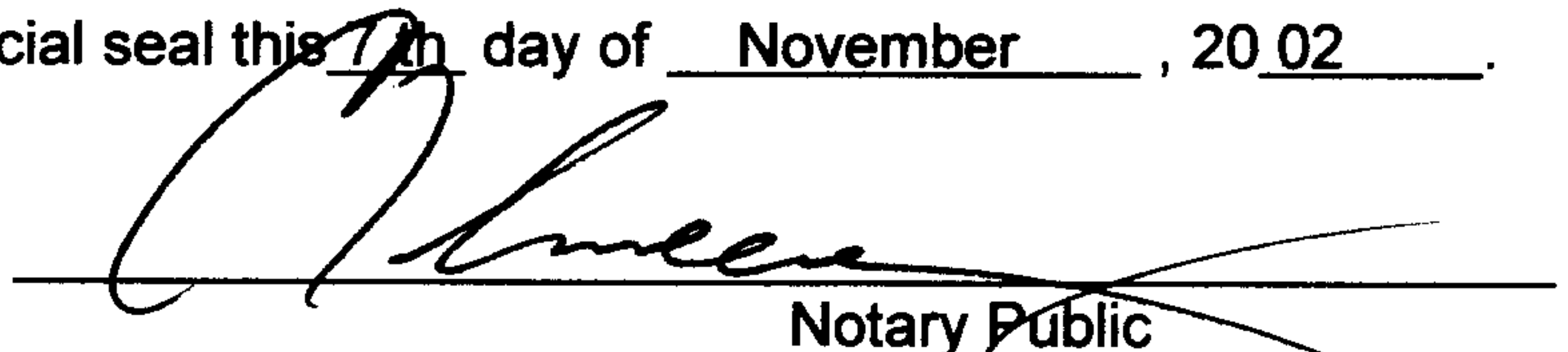
Jefferson COUNTY

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I, the undersigned, a Notary Public in and for said County in said State, hereby certify that James R. Gardner, as Managing Member of\*, 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, executed the same voluntarily on the day the same bears date as the act of said Limited Liability company.

\* Bear Creek Ridge, L.L.C.

Given under my hand and official seal this 7 th day of November, 2002.

  
Notary Public

[NOTARIAL SEAL]

My Commission Expires: 6-5-2003