


STATE OF ALABAMA)
COUNTY OF SHELBY)

FINAL


20040105000006420 Pg 1/13 50.00
Shelby Cnty Judge of Probate, AL
01/05/2004 11:18:00 FILED/CERTIFIED

**DECLARATION OF RESTRICTIVE COVENANTS FOR
MOUNTAIN CREST ESTATES**

KNOW ALL MEN BY THESE PRESENTS: That:

WHEREAS, Randall H. Goggans and wife, Holly H. Goggans, (collectively "the Developer") have heretofore acquired fee simple title to certain real property situated in Shelby County, Alabama and has subdivided such property (the Subdivision) into 32 Lots (herein "Lots") as described in map and survey of MOUNTAIN CREST ESTATES, as recorded in Map Book 32, Page 76, in the Probate Office at Shelby County, Alabama (herein the "Record Map" or the "Property").

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

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

ARTICLE I

Land Use

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

ARTICLE II

Building Requirements

- (a) **MINIMUM STRUCTURE SIZE OF PRIMARY DWELLING.** No Lot shall contain more than one Primary Dwelling and no Primary Dwelling shall be erected on any Lot if such dwelling contains less than 2700 square feet of living space, for a single story dwelling, and not less than 2900 square feet of living space for a 1 ½ story dwelling and not less than 3200 square feet of living space for a two story Dwelling. Living Space is defined as heated and finished areas and does not include porches, garages, basements, carports or attics.
- (b) **BUILDING LOCATION.** No structure, other than fences, shall be located any closer than 40 feet from Double Oak Lane (the Road) nor shall any structure other than fences be located any closer than 20 feet from any non Road Lot Line. Notwithstanding the foregoing, the location of all buildings and structures shall adhere to applicable governmental regulations.
- (c) **TEMPORARY STRUCTURES AND OUTBUILDINGS.** No mobile homes or temporary dwellings shall be built and used for residential purposes. Guesthouses and other out buildings shall, subject to the approval of the Architectural Review Committee (hereinafter defined and sometimes referred to as the ARC or the Committee), be allowed.
- (d) **DESIGN CRITERIA.** The objective of the Architectural Review Committee hereinafter established is to provide for the quality development of all of the Lots within the subdivision.
- (e) **SEPTIC TANKS.** All septic tanks must be of an improved type, such tanks together with adequate field lines must be approved and completely acceptable to the Shelby County Health Department. Some Lots may require alternative systems due to slopes. No septic tank or field line shall be constructed within 10 feet of an adjoining Property line. No sewer or drainage lines shall be constructed or laid which shall empty on or become a nuisance to an adjoining Lot, Property Line or Road.
- (f) **Windows.** Only wood or metal clad windows are permitted.
- (g) **THE ROOF.** Pitch on any Primary Dwelling shall not be less than 8 and 12 unless first approved in writing by the Architectural Review Committee. All roofing to be architectural asphalt or natural or gray color or any other roof approved by the ARC.
- (h) **No residence shall have an open carport or front garage.** Extreme cases for front garages will be considered by the ARC.
- (i) **NO CANTILEVERED CHIMNEY SHALL BE ALLOWED ON THE FRONT OR SIDES OF ANY STRUCTURE.** All chimney chases on the front and side shall be supported by the foundation of the structure and shall be constructed of the same material as used in the foundation. Cantilevered chimney chases may be allowed on the rear by specific approval of the Architectural Review Committee. Bay windows on the front of the dwelling must have a bottom return.
- (j) **CONSTRUCTION OF IMPROVEMENTS.** When the construction of any building is once begun, work thereon must be prosecuted diligently and continuously and must be completed within 12 months.
- (k) **OUTBUILDINGS.** No outbuildings, storage sheds, separate garages or detached buildings of any kind shall be allowed, unless approved in writing by the ARC.
- (l) **POOLS.** Swimming pools shall only be allowed if approved in writing by the Architectural Review Committee.

- (m) **OBSTRUCTION OF VIEW AT INTERSECTIONS.** No tree, fence, wall, hedge, shrub or planting which obstructs lines of view at elevations between two (2) and six (6) feet above the Roads shall be placed or permitted to remain on any corner Lot. Trees shall be permitted to remain provided the foliage line is kept trimmed so as to prevent obstruction of such lines of sight.
- (n) **Upon** completion of the Primary Dwelling, all front and side yards, which are not left in a natural state, will be landscaped with solid sod. The rear yard may be sprigged, seeded or solid sod, or left in a natural state. No straw or bark shall be required in areas which are left in a natural state.
- (o) **LOCATION OF AIR CONDITIONING UNITS AND VENTS.** Outside air conditioning units and plumbing and heating vents shall be placed only at the rear or at the sides of houses. (v) All porches on the front sides of any dwelling shall be supported by the foundation of the structure of the Dwelling.
- (p) **DESIGN CRITERIA, STRUCTURE.** It is the intent of Developer that Mountain Crest will generally present a consistent architectural environment. In the event of conflict between Paragraphs (p) through (w) and Paragraphs (a) through (o) in this Article II, the provisions of Paragraphs (p) through (w) shall control. The following types of exterior materials, among others, are acceptable, subject to final approval of the actual appearance of such materials by the Committee:
- (i) Brick, stone, painted wood, synthetic or masonry stucco. All horizontal lapped siding shall have a maximum of 8 inches per board exposed to weather.
 - (ii) Any siding used as a veneer other than in a gable shall not exceed 15% of total coverage of the exterior, excluding gables and dormers. Exclusive use of the siding as an exterior finish is prohibited. The Committee may make exceptions to the 15% rule on rear of homes on Lots with extreme slope.
 - (iii) No concrete block, cinder block or concrete shall be used as an exposed building surface. Any concrete block, cinder block or concrete utilized in the construction of a dwelling or for a retaining wall or foundation shall be finished in materials such as brick, stone, stucco or the like. Cross tie walls may be permitted in some cases if planned as a part of the landscape plan. Any cross tie wall and landscaping of same must be submitted to the committee in writing. Concrete walls or other types of decorative products may be considered if approved by the Architectural control in writing.
- (q) **Exterior** materials shall be generally uniform on all sides of a residence, and no artificial, simulated or imitation materials shall be permitted without the prior approval of the Committee after submission of samples. Exterior paints shall be soft tones not to include high gloss finishes or pure red. Reflective glass shall not be permitted on the exterior of any dwelling, and no foil or other reflective material which produces the same effect as reflective glass shall be installed on any windows or used for sunscreens, blinds, shades or other purposes.
- (r) **18" diameter** or smaller satellite dishes may be permitted if properly screened. Any other type of radio antenna, radio receiver, or other similar device must be submitted in writing to the Architectural Review Committee on an individual basis. No radio or television signals or any other form of electromagnetic radiation or transmission shall be permitted to originate from any lot or dwelling which may interfere with the reception of radio or television signals within the Property.

(s) **No plumbing** or heating ventilators shall be placed on the front of the roof. All vents, fans or other items protruding from roofs shall be painted and shall be located on the rear or side of the roof. Any material other than natural copper used for roof valleys, flashings, drips, downspouts or gutters shall be painted to blend with roof color or with the color of the exterior finish of the dwelling.

(t) **All driveways** shall be finished with brick, stone, concrete pavers, asphalt or concrete. Dirt, gravel and loose stone driveways following completion of construction of a dwelling are prohibited.

(u) **Chain** link, wire or metal (other than wrought iron) fences of any type are prohibited, but black or green vinyl coated chain link fences may be permitted upon approval of the Committee. All fences, including materials and location, must be approved by the Committee prior to construction. All fences constructed in front yards or visible from the street shall not protrude beyond the front building set back line of any adjacent lot and shall not exceed six feet in height above grad. No crosstie walls shall be permitted in front of any building line.

(v) Front steps shall be constructed of brick, stone or architecturally treated concrete, subject to approval of the Committee.

(w) No facilities, including poles, wires, pipes and conduits for the transmission of electricity, telephone, gas, water, sewer, cable television, security and other uses, shall be placed or maintained above the surface of the ground on any Lot, and no external or outside antennas of any kind shall be maintained. No Lot Owner shall erect or permit any third party to erect any such overhead wires, poles or facilities of any kind. Each Lot Owner agrees, by acceptance of a deed to a Lot within the Property, to connect utility service lines (including, but not limited to, natural gas, water, sewer, cable television and electricity) at points designated by the Developer.

ARTICLE III ARCHITECTURAL REVIEW COMMITTEE

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

1. A site plan of the Lot showing the location, height, and exterior design (including a summary of all proposed materials together with samples of exterior materials and paint colors) of all buildings and improvements proposed to be constructed on the Lot; paint colors should be earth tone. Bright colors are discouraged and will be denied;
2. A grading, and drainage plan for the Lot; and
3. Any remodeling, reconstruction, alterations or additions to an existing residence shall require the written approval of the Architectural Review Committee.

(b) **COMPOSITION OF THE COMMITTEE.** The Architectural Review Committee (the "Committee"), until termination or modified pursuant to Article III, Paragraph (j) as hereinafter set out shall be Randall H. Goggans, or a designated representative of Developer until such time as the Developer has sold all of the Lots (except Lots 25 and 30) within the property. Builder

Lots means all Lots within the Subdivision except Lots 25 & 30. At such time as the Developer has sold all of the Builder Lots, the Committee shall be comprised of at least three (3) individual Builders who have purchased the Builder Lots. After all of the Builder Lots have been sold by the builder, the Committee shall be comprised of three (3) individuals who are Lot Owners, who are elected by a majority of the fee simple Owners of the Lots within the Property and at such time, the affirmative vote of a majority of the members of the Committee shall be required in order to issue any permit and authorization set forth herein.

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

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

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

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

(A) Failure of such plans and specifications to comply with the covenants and restrictions herein set forth;

(B) Failure to include information in such plans and specifications as may have been reasonably requested by the ARC;

(C) Reasonable objection to the exterior design, appearance or materials proposed to be used in any proposed structure;

(D) Incompatibility of use of any proposed structure or improvement with existing structures or uses upon other Lots in the Property;

(E) Objection to the site plan, clearing plan, drainage plan for any special parcel;

(F) Failure of plans to take into consideration the particular topography, vegetative characteristics, and natural environs of the Lot; and

(G) Any other matter which, in the judgment of the Committee, would render the proposed structure, improvement, or uses inharmonious with the general plan of improvement of the Property or with structures, improvements, or uses located upon Lots in the Property.

3. In any case where the ARC shall disapprove any plans and specifications submitted hereunder, or shall approve the same only as modified or upon specified conditions, the disapproval shall be accompanied by a statement of the grounds upon which such actions were based. If no response is made by the ARC within a ten (10) day period after submission of such plans and specifications, it shall be deemed that such plans and specifications are approved. In any such case the ARC shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal can be prepared and submitted for approval.

(e) **RETENTION OF COPY OF PLANS.** Upon approval by the ARC of any plans and specifications, as approved, shall be deposited for permanent record with the ARC, and a copy of

such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same.

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

(g) **CERTIFICATE OF COMPLIANCE.** Upon completion of the construction or alteration of any structure or improvement in accordance with the plans and specifications approved by the ARC, the ARC shall, upon written request of the Owner thereof, issue a certificate of compliance in form suitable for recordation, identifying such structure or improvement is placed, and stating that the plans and specifications, the location of such structure or improvement and the use or uses be conducted thereon have been approved and that such structure or improvement complies with the requirements of the ARC. Preparation and recording of such certificate shall be expense of such Owner. Any certificate of compliance issued in accordance with the provisions of this Article III, Paragraph ____ shall be prima facie evidence of the facts therein and as to any purchaser or encumbrance in good faith and for value, or as to any title, such certificate shall be conclusive evidence that all structures or improvements on the use or uses described therein comply with all the requirements of this Article III, and all other requirements of this Article III, and with all other requirements of the Declaration which the Committee exercises any discretionary or interpretive powers.

(h) **INSPECTION RIGHTS.** Any agent of the Developer or the ARC may at any reasonable times enter upon and inspect any Lot or any improvements thereon for the purpose of ascertaining whether the maintenance of such Lot and the maintenance, construction, or alteration of structures and improvements thereon are in compliance with the provisions hereof; and neither the Developer nor the ARC nor any such agent shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

(i) **WAIVER OF LIABILITY.** Neither the ARC nor any architect nor agent thereof, nor any partner, agent, or employee of any of the foregoing, shall be responsible in any way for (i) any failure of structures or improvements to comply with requirements of this ration, although a certificate of compliance has been issued; (ii) any defect in any plans and specifications submitted, revised, or approved in accordance with the foregoing provisions; or (iii) any structural or other defects in any work done according to such plans and specifications, and all persons submitting any such plans and specifications, and all persons relying thereon, not to sue

or claim against the entities and persons referred to in this Article III for any arising out of the matters referred to in this Article III and further agree to and do hereby release said entities and persons for any and every such cause.

(j) DURATION.

1. The rights of the Developer as to the Architectural Review Committee shall terminate upon the earlier of
 - (A) The date that the Developer has sold the last Builder Lot within the Subdivision; or
 - (B) The resignation or inability of the Developer to perform on the ARC.
2. After the Developer's involvement with the ARC has ended, the Committee shall determined as set forth above in this Article III Paragraph (b).
3. Inactivity of the ARC shall not be deemed a waiver of the rights of the ARC.

ARTICLE IV

Easements

(a) The Developer does hereby establish an easement on Lots 1 and 2, which easement shall be within ten (10) feet of the right of way line of the extension of Double Oak Lane for the purpose of placing entrance monument advertising the subdivision. After such entrance monument has been constructed and completed, the easement reserved herein shall expire except to the extent of an area of 10 feet by 10 feet wherein the entrance monument is located if this is acceptable to Shelby County Highway Department. The entrance monument and the easement area surrounding it shall be maintained by the Lot Owners. Developer has no obligation to install any such entrance monument.

(b) Appearing on the Record Map southeasterly of Lots 26,27 and 28 appears a COMMON AREA of 1.79 acres more or less. The Common Area is a detention pond for drainage for the following lots: 3,4,5,6,7,8,9,10,11,12 and lots 22,23,24,25,26,27,28,29. These Lots are referred to as the Common Area Lots.

As an appurtenance to the ownership of their Lots, the Owners of the Common Area Lots shall additionally own an undivided interest in the Common Area said undivided interest being determined by a fraction wherein the numerator is one (1) and the denominator is the number of Common Area Lots. The detention pond located within the Common Area shall be maintained by the owners of the Common Area Lots equally. Further, a perpetual easement is hereby reserved between Lots 26 and 27 and Lots 28 and 29 as shown on the final record plat in order to provide the necessary equipment to maintain the detention pond located in the Common Area from time to time.

ARTICLE V

Miscellaneous

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

(b) No obnoxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the Property, or the other Lot Owners. Without limiting the generality of the foregoing, it is the intent of the developer and these covenants to restrict the use of the Property and any Lot therein, which will act from a high quality single-family residential subdivision. No boat, trailer, recreational or

commercial vehicle or bus or vehicle of any kind which is not in drivable condition, shall be allowed to be parked or stored on any Lot in a location where it can be seen from a front or street. Except during construction no Lot shall be used as a dumping ground for rubbish, trash, garbage or other waste. After construction is completed, rubbish, trash, garbage or other waste shall not be kept on a Lot except in sanitary containers. Each Lot shall be maintained in a neat orderly fashion at least to the extent of visibility from the Roads, which includes the yard, any shrub beds. No large satellite, microwave dishes or television or radio antennas shall be on any Lot unless approved in writing by the ARC, but in no event shall large satellite, microwave dishes or televisions or radio antennas be visible from the Roads. No Lot shall be cultivated for crops of any sort, except for gardens of reasonable size, which is to be located in rear of the Primary Dwelling.

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

(d) **During** all construction, all vehicles, including those delivering supplies, must enter the building Lot on the driveway only as approved by the ARC so as not to unnecessarily damage trees, and Roads. Any damage not repaired by the contractor will be repaired by the ARC (after ten (10) days written notice) and will be charged to the Lot Owner at a reasonable charge for such services, which charge shall constitute a lien upon such Lot enforceable by appropriate proceedings at law or equity. The Roads are designed for residential and light construction use only. Any damage caused by excessive dirt hauling to or from a Lot will be charged to the Lot owner. If there are any disputes as to damages, the Shelby County Engineer, shall determine any damages and the amount of such damage. During construction, all Builders must keep the homes, garages, and building site reasonably clean. All building debris, stumps, trees, etc., must be removed or contained from each building Lot by the Builder as often as necessary. If any lot owner is deemed to be in violation by the ARC, the lot owner will be mailed a notice giving ten (10) days to correct the defect. If the defect is not corrected within ten (10) day period, the ARC and the Lot Owners may choose to repair the defects and charge the offending Lot Owner a reasonable rate. Such charge shall constitute a lien enforceable by appropriate proceeding at law or equity. Best management practices shall be implemented and observed during all construction on any Lot. The Shelby County Engineer's office will determine improvements needed if disputes arise concerning best management practices. All Lot Owners and their contractors shall comply with the permit for Mountain Crest Estates development issued by the Alabama Department of Environmental Management. If any Builder or Individual Lot Owners are in violation of the ADEM permit, the permit holder may make the necessary improvements after 7 days notice and assess a reasonable charge for the services, which charge shall constitute a lien upon such lot enforceable by appropriate proceedings at law or equity.

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

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

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

- (h) **No Lot** in the Subdivision may be subdivided or replatted without the express written consent and approval of the ARC, 2/3 of the Lot Owners (with each Owner having 1 vote per lot owned) and the appropriate government agency.
- (i) **GRANTEE'S ACCEPTANCE.** The grantee of any Lot subject to the coverage of this Declaration, by acceptance of the deed or other instrument conveying an interest in or title to, execution of a contract for the purpose thereof, whether from Owner or a subsequent Owner such Lot, shall accept such deed or other contract upon and subject to each and all of these restrictions herein contained and other easements, restrictions and reservations of record.
- (j) **INDEMNITY FOR DAMAGES.** Each and every Lot Owner and future Lot Owner in accepting a deed or contract for any Lot subject to the Declaration, agrees to indemnify the Developer for any reasonable direct damage (but not consequential damages) caused by such Owner, or the contract, agent, or employees of such Owner, to the Roads, streets, gutters, walkways or other aspects of public ways, including all surfacing thereon or to water, drainage or storm sewer lines or sanitary sewer lines owned by the Developer, or for which Developer has responsibility, at the time of such damage.
- (k) **SEVERABILITY.** Every one of the provisions and restrictions is hereby declared to be independent of, and severable from the rest of the provisions and restrictions and of and from every other one of the provisions and restrictions and of and from every combination of the provisions and restrictions.
- (l) **EFFECTS OF VIOLATION ON MORTGAGE LIEN.** No violation of any of this Declaration shall defeat or render invalid the lien of any mortgage made in good faith and for value upon any portion of the Property, and Lot therein; provided, however, that any Mortgagee in actual possession, or any purchaser at any foreclosure sale shall be bound by and subject to this Declaration as fully as any other Owner of any portion of the Property, any Lot therein.
- (m) **OWNER.** As used herein, "Owner" shall mean the record fee title owner of a Lot within the Subdivision, whether such ownership is by one or more persons or entities. Each Lot shall only have one vote relating to matters concerned by this instrument regardless of the number of owners.
- (n) **NO REVERTER.** No restriction herein is intended to be, or shall be construed as a condition subsequent or as creating a possibility of reverter.
- (o) **DURATION AND AMENDMENT.** The restrictions contained in this Declaration shall run with and bind the Property and, shall inure to the benefit of and shall be enforceable by the Developer, the ARC, and the Owner of any Lot included in the Property, their respective legal representatives, heirs, successors and assigns until the 1st day of September, 2018, after which time said restrictions shall be automatically extended for successive periods for ten (10) years. This Declaration may not be amended in any respect except by the execution of an instrument shall be signed by 2/3 of the Lot Owners, which instrument shall be filed for recording among the Land Records of Shelby County, Alabama, or in such other place of recording as may be appropriated at the time of the execution of such instrument. After September 1, 2018, this Declaration may be amended and or terminated in its entirety by an instrument signed by not less than a majority of the Lot Owners, which instrument shall be filed for recording among the Land Records of Shelby County, Alabama, or in such other places of recording as may be appropriate at the time of the execution of such instrument.
- (p) **ENFORCEMENT.** In the event of a violation or breach of any of these restrictions or any amendments thereto by any Owner of a Lot, or employee, agent, or lessee of such Owner, the Owner(s) of Lot(s), Developer, their successors and assigns, or any party to whose benefit these

restrictions inure shall have the right to proceed at law or in equity to compel compliance with the terms and conditions hereof, to prevent the violation or breach of said restrictions, to sue for and recover damages for any amounts required to be paid hereunder, or take all such courses of action at the same time, or such legal remedy deemed appropriate. No delay or failure on the part of an aggrieved party to initiate and available remedy set forth herein shall be held to be a waiver of that party or of any other party to assert any right available to him upon the recurrence of continuation of said violation or the occurrence of different violations. Damages shall not be deemed adequate compensation for any breach or violation of any provision hereof, but any person or entity entitled to enforce any provision hereof shall be entitled specifically to relief by way of injunction as well as any other available relief either at law or in equity.

Any party to proceeding who succeeds in enforcing a restriction or enjoining the violation of a restriction against a Lot Owner shall be awarded as reasonable attorney's fee against such Lot Owner, and shall have the right to place recorded lien on any Lot for purpose of securing the payment of any amounts owing by a Lot Owner under this Declaration and such lien may be enforced in the same manner as foreclosure of a mortgage under the law of the State of Alabama.

(q) **NO WAIVER.** The failure of any party entitled to enforce any of these restrictions herein contained shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to such violation or breach occurring prior or subsequent thereto; provided, however, that approval of plans pursuant to Article III shall be binding on any and all parties as a conclusive determination that such plans are in conformity with these restrictions.

(r) **All** Lot owners shall maintain their Lot and the improvements thereon in a neat and orderly fashion. The Developer has a master permit for Mountain Crest Estates with ADEM. It shall be the responsibility of Lot Owners to maintain any erosion control devices on their individual Lots. If additional erosion and sedimentation control devices are needed due to construction or grading by the Lot Owner(s), it shall be the responsibility of such Lot Owner. All Lot Owners must keep their individual Lots in compliance with ADEM regulations. If any Builder or Individual Lot Owners are in violation of the ADEM permit, the permit holder may make the necessary improvements after 7 days notice and assess a reasonable charge for services, which charge shall constitute a lien upon such lot enforceable by appropriate proceedings at law or equity.

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

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

(t) **PROPERTY SOLD AS IS WHERE IS.** By accepting a Deed or Mortgage to a Lot, such Lot Owner and/or Mortgagee acknowledges that the Developer has no further responsibility with respect to the Property or the Road or improvements located thereon, it being expressly understood that all Lots and any improvements including the Roads are sold **AS IS/WHERE IS**. Notwithstanding the foregoing, it shall be the responsibility of the Developer to seal with asphalt that portion of Double Oak Lane, which is located within the Property, and comply with the requirements of the affable governmental agencies with respect to such agency's acceptance of the dedication of the Road. As used in these covenants, the words "Road" or "Roads" mean Double Oak Lane.

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

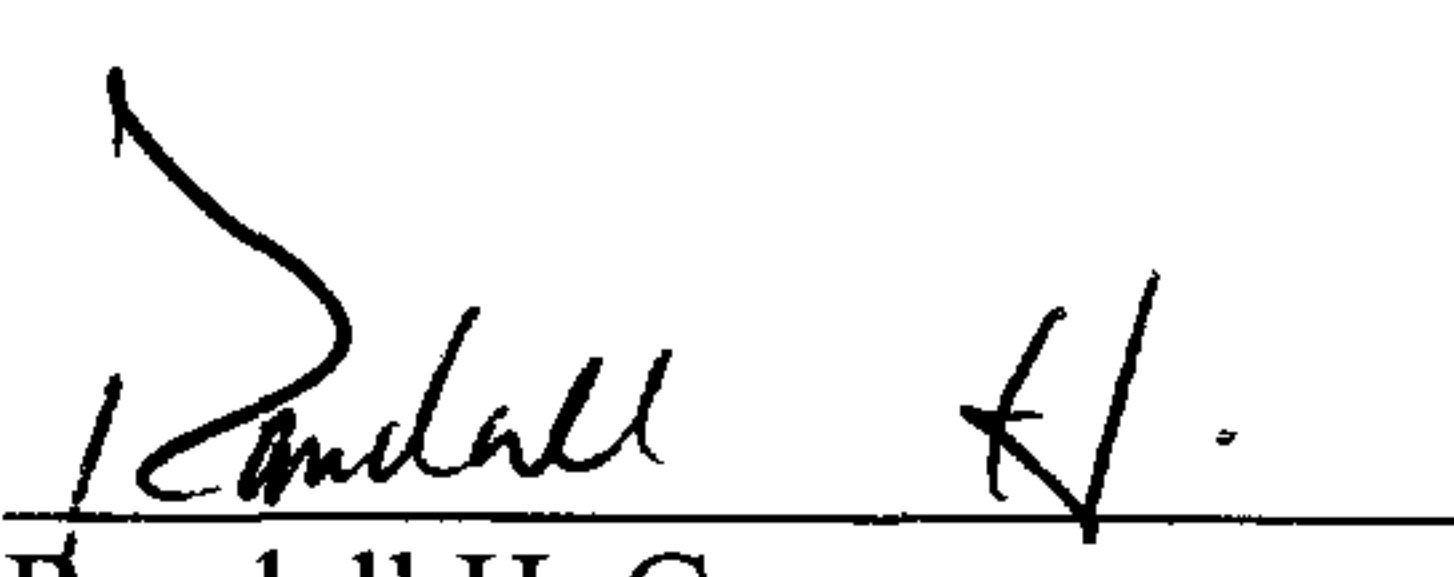
on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Each party to such claim or controversy shall appoint one person as an arbitrator to hear and determine the dispute and if they shall be unable to agree, then the two arbitrator whose decision shall be final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

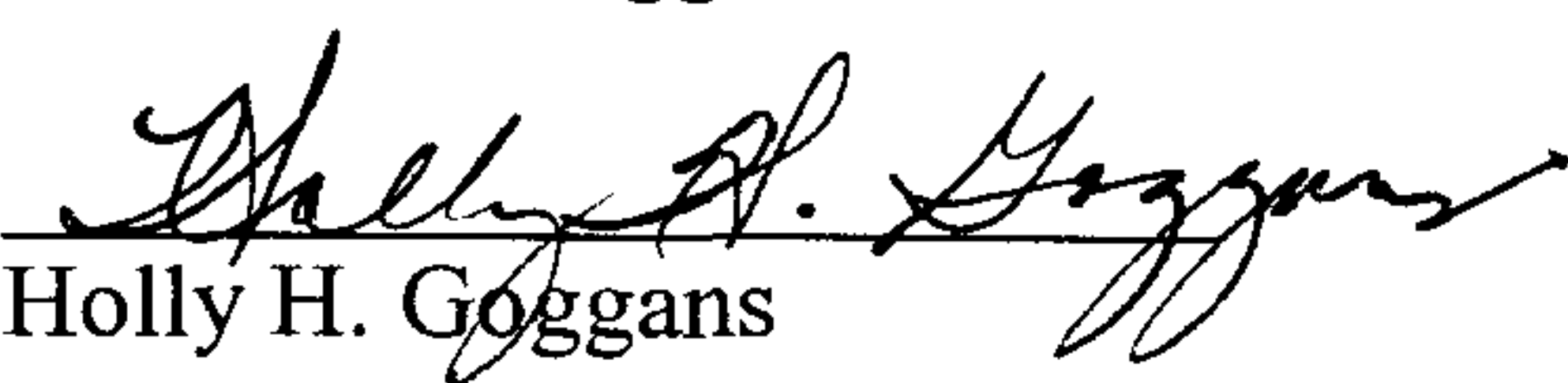
(V) NOTICES. Any notice to be given under these covenants shall be in writing and be sent by certified mail, return receipt requested and shall be effective if given to the Lot Owner to whom such notice is directed at either; 1. The address provided by such Lot Owner to the other; or 2. At the address maintained by the Tax Collector of Shelby County, Alabama for such Lot Owner (herein the "Authorized Address"). Mailing, postage prepaid, by certified mail, to the Authorized Address shall conclusively mean receipt by the Lot Owner to whom such notice is intended. In the event such notice is for repair or maintenance on a Road, the failure of any Lot Owner to respond to any such notice within thirty (30) days of the date of such notice shall be conclusively deemed an Affirmative Vote by such non responding Lot Owner to the proposed maintenance or repairs.

(w) **Notwithstanding** anything to the contrary contained herein, it is expressly understood that Developer currently owns a residence and certain out buildings, which are located on Lot 25. Notwithstanding the provisions of this Declaration, all improvements located on Lot 25 are approved as of the date of this Declaration and are not subject to any building requirements contained herein or the ARC unless modifications or changes in such improvements are proposed after the date of this Declaration. The developer may construct a garage on the rear of the residence using the same exterior materials as used on the residence.

(x) Union State Bank and Creed Development, LLC, being the Developers Mortgagee have executed these Covenants in order to indicate that the Mortgages they hold on the Property are subject to and subordinate to these Covenants.

IN WITNESS WHEREOF, the undersigned, as the Developer of the Property, has caused this Declaration to be executed as of the 31 day of December 2003.


Randall H. Goggans


Holly H. Goggans

Union State Bank

By:

Its:

Creed Development, LLC

By:

W. Larry Clayton

Its:

STATE OF ALABAMA)
SHELBY COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Randall H. Goggans and Holly H. Goggans whose names are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day, that being informed of the contents of the foregoing instrument he executed the same voluntarily on the day the same bears date.

Given under my hand and seal this 31 day of DECEMBER, 2003

Notary Public

My Commission Expires:

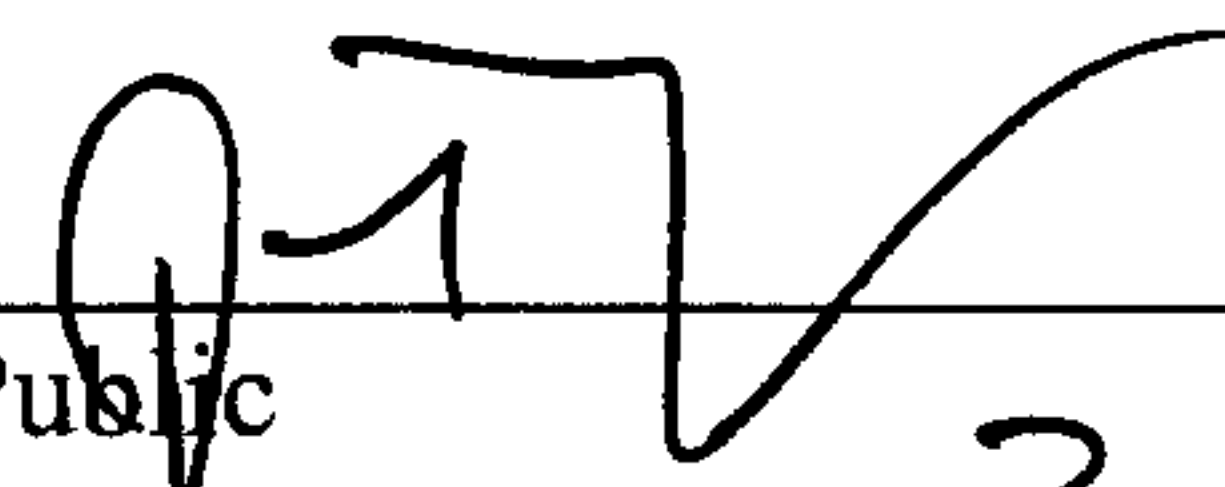
STATE OF ALABAMA)
SHELBY COUNTY)

CORPORATION ACKNOWLEDGEMENT

I, THE UNDERSIGNED, A notary Public in and for said County in said State, hereby certify that REX V. ALEXANDER, whose name as PRESIDENT of Union State Bank, a corporation is signed to the foregoing conveyance, and who is known to me, acknowledged before me this day that, being informed of the contents of the conveyance, he, as

such officer and with full authority, executed the same voluntarily for and as the act of the corporation.

Given under my hand and official seal this 5 day of JANUARY, ~~2003~~ ²⁰⁰⁴.



Notary Public
My Commission Expires: 3.1.06

20040105000006420 Pg 13/13 50.00
Shelby Cnty Judge of Probate, AL
01/05/2004 11:18:00 FILED/CERTIFIED

STATE OF ALABAMA)
SHELBY COUNTY)

LLC ACKNOWLEDGMENT

I, the undersigned, a Notary Public, in and for said County in said State, hereby certify that W. Larry Clayton as MANAG LN of Creed Development, LLC, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of this instrument, he, in their capacity as such member, executed the same voluntarily, for and as the act of said limited liability company.

Given under my hand and official seal this 5 day of JANUARY, ~~2003~~ ²⁰⁰⁴.



Notary Public
My Commission Expires: 3.1.06