

STATE OF ALABAMA)
SHELBY COUNTY)

AMENDMENT and ADDITION TO
DECLARATION OF PROTECTIVE COVENANTS
FOR
EMERALD PARC
PHASE I, LOTS 33-38
PHASE II, LOTS 8 - 22

THIS AMENDMENT AND ADDITION TO DECLARATION OF PROTECTIVE COVENANTS will only be applicable to the above Phase I, 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 Phase II, Lots 8 - 22, 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 March 2, 2004, as Instrument No. 20040302000106370 and is made as of this 2nd day of March, 2004, 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, and Lots 8 - 22, both inclusive, Emerald Parc, Phase II, Shelby County, Alabama.

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

(a) Easement to Use the Lake. 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 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 Lake 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 Lake under Section 3.4(b) below and the reservation of the Developer with respect to the use of the Lake under Section 3.4(c) below.

(b) Limitation and Restrictions Regarding the Lake. 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 Lake shall be limited to the rights granted to the Developer in and to the Lake, under the Lake Easement Agreement and any other instrument by which the Developer or the Association may acquire an interest in, or a right to use, the Lake. The use and enjoyment of the Lake 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 Lake without prior approval of the Association. Such approval shall be in the sole discretion of the Association and may 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, 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 Lake 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 Lake has been designed for fishing for large mouth bass. Fishing will be allowed only with artificial bait. No person shall transfer any fish to and from the Lake. Fishing with live bait is absolutely prohibited.

(v) Guests. Subject to the provisions of Section 3.4(c) below, the use of the Lake 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 the Lake 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 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.

(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 Lake. 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) 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 Lake, 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 Lake 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 Lake and the right, but not the obligation, to grant to other persons a nonexclusive right and license to use the Lake; provided that such persons shall only have the right to use the Lake at any one time; the use of the Lake by such persons shall be subject to the restrictions and limitations on the use of the Lake as herein set forth and the rules and regulations promulgated by the Developer with respect to the use of the Lake.

(iii) Developer hereby reserves the right to grant a nonexclusive right and license to use the Lake 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 Lake.

(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 the Lake 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 the Lake 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 Lake 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 Lake 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 Lake, any person by his use of the Lake 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 Lake 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 Lake; 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 Lake 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 Lake.**

(a) **Easement Upon Common Areas and Lake.** 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 Lake 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 Lake 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 Lake.** 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 Lake, 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 Lake, as Developer, in its sole discretion, may determine.

(c) With respect to each of the above Lake-front lots, the land lying between the Lot line closest to the Lake and the low water line of the Lake itself, shall not be considered a Common Area and shall be and is hereby reserved exclusively for the use of the Owner(s) of such Lot, his/her/their heirs, successors, and assigns forever.

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 Lake, 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. General Provisions.

4.01 Notices. Any notice required to be sent to any Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed by United States mail, postage prepaid, to the address of such Owner as it appears on the records of the Association at the time of such mailing. Any notice required to be sent to the Developer or the Association, as the case may be, shall be deemed to be sent when mailed by United States mail, postage prepaid, to their respective registered office in the State of Alabama.

4.02 Severability. Invalidation of any provision or provisions hereof by judgment or court order shall in no way affect any previous other provision, all of which shall remain in full force and effect.

4.03 Governing Law. Should any dispute or litigation arise between any of the parties whose rights or duties are affected or determined by this Declaration as the same may be amended from time to time, said dispute or litigation shall be governed by the laws of the State of Alabama.

4.04 Captions. The captions and titles of the various Articles and Sections in this Declaration are for convenience of reference only, and in no way define, limit or describe the scope or intent of this Declaration.

4.05 Usage. Whenever used herein the singular shall include the plural and the singular, and the use of any gender shall include all genders.

4.06 Conflict. (a) If any irreconcilable conflict should exist, or hereafter arise, with respect to the interpretation of any provisions of this Declaration, the Articles, the By-Laws or the Rules and Regulations, then the provisions of this Declaration shall prevail.

(b) All disputes and controversies of every kind and nature between the Developer and any Owner or subsequent owner of any property to which these protective covenants are applicable as to the existence, construction, validity, interpretation or meaning, performance, nonperformance, enforcement, operation, breach, continuance, or termination of the Protective Covenants or any contract for the sale or purchase of the real estate described in the contract, or performance related thereto, or any part or aspect thereof or in any way related to the same or any real estate, lot or portion thereof or interest therein, shall be submitted to arbitration pursuant to the procedure set forth in this agreement.

(c) Either party may demand such arbitration in writing within sixty (60) days after the controversy arises, which demand shall include the name of the arbitrator appointed by the party demanding arbitration, together with a statement of the matter in controversy.

(d) Within thirty (30) days after such demand, the other party shall name his/her/its arbitrator, or in default of such naming, such arbitrator shall be named immediately by the Arbitration Committee of the American Arbitration Association, and the two (2) arbitrators so selected shall name a third arbitrator within thirty (30) days or, in lieu of such agreement on a third arbitrator by the two arbitrators so appointed, a third arbitrator shall be appointed by the Arbitration Committee of the American Arbitration Association.

(e) The arbitration costs and expenses of each party shall be borne by that party.

(f) The arbitration hearing shall be held at Columbiana, Alabama on thirty (30) days' notice to the parties.

(g) The arbitration rules and procedures of the American Arbitration Association

shall be used in the arbitration hearing and the law of evidence of the State of Alabama shall govern the presentation of evidence at such hearing.

(h) The arbitration hearing shall be concluded within thirty (30) days unless otherwise ordered by the arbitrators and the award on the hearing shall be made within thirty (30) days after the close of the submission of evidence.

(i) An award rendered by a majority of the arbitrators appointed under this agreement shall be final and binding on all parties to the proceeding during the period of this agreement, and judgment on such award may be entered by either party in the highest court, state or federal, having jurisdiction.

(j) The provisions of this agreement shall be a complete defense to any suit, action, or proceeding instituted in any federal, state, or local court or before any administrative tribunal with respect to any controversy or dispute arising during the period of this agreement and which is arbitrable as set forth in this agreement.

(k) Nothing contained in this agreement shall be deemed to give the arbitrators any authority, power, or right to alter, change, amend, modify, add to, or subtract from any of the provisions of the Declaration of Protective Covenants or any contract entered into by and between the parties concerning the sale of said property or any interest therein, including, but not being limited to, the initial contract between Developer and the initial purchaser of said property.

(l) It is agreed that this agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Alabama.

(m) Any notice provided for or concerning this agreement shall be in writing and be deemed sufficiently given when sent by certified or registered mail.

(n) Any modification of this agreement or additional obligation assumed by either party in connection with this agreement shall be binding only if evidenced in writing signed by each party or an authorized representative of each party.

5. 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 _____ day of March, 2004.

[SIGNATURES ON FOLLOWING PAGE]

H & T HOME BUILDERS, INC.

By: _____
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 _____ day of March, 2004.

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 1st day of March, 2004.

Paula Head
Notary Public