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Shelby Cnty Judge of Probate, AL
07/06/2004 10:52:00 FILED/CERTIFIED

STATE OF ALABAMA)

SHELBY COUNTY)

Second Amendment to
DECLARATION OF PROTECTIVE COVENANTS
BEAR CREEK RIDGE
SECTOR II

Recorded in **Instrument #1999-16693** and the
First Amendment recorded in **Instrument # 20021115000570250** .

(The Protective Covenants and the First Amendment Instruments stated above 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 and in the event of a conflict with any prior Protective Covenants or any Amendment(s) thereto, shall supercede those Protective Covenants recorded in **Instrument #1999-16693** and the First Amendment, to said Protective Covenants, recorded in **Instrument # 20021115000570250** . All other clauses in said Protective Covenants, and any Amendment(s) thereto, shall remain in full force and effect as originally recorded in the aforementioned Instrument(s) **#1999-16693** and **Instrument # 20021115000570250** .

I. Exclusive Residential Use and Improvements.

C. Building Setbacks. No building shall be located on any Lot nearer to the front Lot line than forty feet (40') on any lot. No building shall be located nearer to any side street line than thirty-five feet (35') for any Lot. No improvement(s) on any Lot shall be located nearer than fifteen feet (15') to any interior side property line. No building shall be located on any Lot nearer than thirty feet (30') to any interior rear Lot line(s) or fifteen feet (15') to any exterior rear Lot line(s). Lot(s) 24, 25, 26, 27, 28, and 29 shall have a minimum setback of no less than forty-five feet (45') from any rear Lot line. Lot 20 shall have a minimum setback of no less than thirty feet (35') from all Lot lines. For the purpose of these Protective Covenants eaves, steps, and open decks or terraces shall not be considered as part of a building; provided, however, that this shall not be construed to permit any portion of a building, on a Lot, to encroach upon another Lot and eaves, steps, and open decks or terraces shall under no circumstances be nearer than ten feet (10') to any Lot line. Driveways may be nearer ten feet (10') to any

property line, but only when written approval has been obtained from Architectural Control Committee. **The Architectural Control Committee must approve all house plans, improvements, and location of the placement of any residence and its related structures, prior to beginning any construction.**

II. General Requirements, Clause "M" and "Q"

M. Storm Drainage Control. No Lot Owner(s) shall modify or otherwise alter any existing drainage in any manner, and specifically shall not alter or cause drainage to divert the flow of water onto an adjacent lot or lot(s). (Declarant, its heirs, and/or assigns retain the right, but shall not be required, to enter any of the aforementioned lots for the purpose of adding to and/or modifying the existing drainage areas or patterns as Declarant, its' heirs, and/or assigns deem(s) is necessary - at their sole discretion -to improve runoff water and/or to direct water under additional roads or with regards to developing future lots.) It shall be the sole responsibility of the Lot Owner(s), their heirs, and/or successor(s) to provide and maintain adequate drainage away from any building site(s). *Each Lot Owner(s) hereby agree(s) that upon purchasing any lot(s) in Bear Creek Ridge Subdivision, they accept any and/or all lot(s) drainage including, but not limited to: design, run-off patterns, condition, characteristics, and all other related surface and/or subsurface drainage concerns as Declarant has prepared it in its "as is" condition and thus release and agree to hold harmless Declarant, its heirs, assigns, and/or successor(s) from any defect(s) or future responsibilities whatsoever concerning any of the aforementioned.* Furthermore, any altering, modification, change(s), etc. of any storm drainage runoff areas by any Lot Owner(s) or their Builder, subcontractor(s) and/or representative(s) shall be approved by *Declarant, its' heirs, assigns, and/or successor(s)*, all proper Shelby County and any other required governing body(s) prior to any work being performed. In the event aforementioned approval(s) are not obtained, in writing, said Lot Owner(s) shall be responsible for remedying the situation, at said Lot Owner(s) sole expense, within thirty (30) days of being notified of such. A penalty fee of one hundred dollars per day (\$100) shall apply for non-compliance as stated herein which shall be paid by said Lot Owner(s) to Declarant, its' heirs, and/or assigns.

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 5th 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 set up 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. 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 company; etc. have been completed, fully satisfied and/or expired and the Developer, Declarant, its heirs and/or its assigns and all of the respective contracted company(s), at Developer, Declarant, its heirs and/or assigns sole discretion agrees to any such cancellation. In any event so long as Developer, Declarant, its heirs and/or assign(s) determines at its sole discretion that said fee(s) are still applicable or necessary, said Lot Owner Fee(s) shall remain due and in full force and effect. **Bear Creek Ridge LOF amount of three hundred dollars (\$300.00) per year cannot be altered without the prior consent and concurrence of Developer, Declarant, its heirs and/or assigns, at Developer, Declarant, its heirs and/or assigns sole discretion.**

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 or the maximum interest allowed under State of Alabama, which ever is higher) 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 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 Owners of more than fifty percent (50%) of all Lots 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 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 foremost for the benefit of Declarants interest and benefit, as Developer, Lot Owner and to protect Developers interest in any adjacent, contiguous, surrounding and/or nearby property(s) and then for all Lot Owner(s) within Bear Creek Ridge subdivision. 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) 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.

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 either be completely rebuilt or totally removed from Lot within one year. All debris must be removed and the Lot restored to a sightly condition, as determined at the sole discretion of Developer, Declarant, its heirs and/or assigns with reasonable promptness provided that in no event shall such debris remain on any Lot in excess of forty-five (45) 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.

Additional Easements. Developer, Declarant, its heirs and/or assigns, at its sole discretion, retains an easement to access any and all right-of-ways and easement(s), including, but not limited to, any drainage easements which require work, changes or modifications as determined by Developer, Declarant, its heirs and/or assigns at any of their sole discretion. This easement shall be a minimum of thirty-feet (30') in width and the length shall be determined by either Developer, Declarant, its heirs, assigns or the contractor designated by the Developer, Declarant, its heirs and/or assigns. Any damage to any Lot as a result of above described easement shall be corrected by contractor or the entity who contracted said work to a reasonable condition as determined by Developer, Declarant, its heirs and/or assigns at Developer, Declarant, its heirs and/or assigns sole discretion.

Term. These and all other Protective Covenants and all Amendments thereto which are in existence as of May 30, 2004, 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 starting from the date this document of Second Amendment to Bear Creek Ridge Protective Covenants is recorded in the Probate Office of Shelby County, Alabama and 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 and/or upon 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) to or 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%), or the maximum interest rate allowed by law in the State of Alabama, whichever is higher) 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 or any Amendments thereto.

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), charge(s), cost(s) or expense(s) and any related interest charge(s), 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. to continue 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.

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Shelby Cnty Judge of Probate, AL
07/06/2004 10:52:00 FILED/CERTIFIED

IN WITNESS WHEREOF, Bear Creek Ridge L.L.C., has caused this Declaration of Protective Covenants to be executed this the 9th day of June, 2004.

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

STATE OF ALABAMA)
SHELBY COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that James R. Gardner, 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 partner, executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 9 day of June, 2004.

[Signature]
Notary Public
NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Oct 17, 2006
~~NOTARY PUBLIC STATE OF ALABAMA~~

[NOTARIAL SEAL]

My Commission Expires: _____