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Shelby Cnty Judge of Probate, AL
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STATE OF ALABAMA)

COUNTY OF SHELBY)

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR KINSALE GARDEN HOMES, SECTOR ONE**

THIS DECLARATION is made on the date hereinafter set forth by Acton Homes, Inc., hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the City of Calera, County of Shelby, State of Alabama, which is more particularly described as: Kinsale Garden Homes, in Map Book 34, Page 16.

NOW THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title, or interest in the described properties or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each Owner.

ARTICLE 1. DEFINITIONS

Association Defined

- 1.01. "Association" shall mean and refer to Kinsale Homeowner's Association, Inc., an Alabama Not for Profit Corporation, its successors and assigns.**

Owner Defined

- 1.02. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot that is a part of the properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.**

Properties Defined

- 1.03. "Properties" shall mean and refer to that certain real property hereinbefore described and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Common Area Defined

- 1.04. "Common Area" shall mean all real property (including the improvements) owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows:

See Exhibit "A" attached hereto and made a part hereof by reference.

Lot Defined

- 1.05. "Lot" shall mean and refer to any plot of land or parcel shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Declaration Defined

- 1.06. "Declarant" shall mean and refer to Acton Homes, Inc., its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

ARTICLE II PROPERTY RIGHTS

Owner's Easements of Enjoyment

- 2.01. Every Owner shall have a right and easement of enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:
- (a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;
 - (b) The right of the Association to suspend the voting rights and the right to use of the recreational facilities by an Owner for any period during which any assessment against the Owner's Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations after a hearing by the Board of Directors of the Association;
 - (c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or

utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of each class of members has been recorded.

Delegation of Use

- 2.02. Any Owner may delegate, in accordance with the By-laws, the right of enjoyment to the Common Area and facilities to the members of the Owner's family, the owner's tenants, or contract purchasers who reside on the property.

Restrictions on Use

- 2.03. **RESIDENTIAL USE.** The said property shall be used for single family residence purposes only and not for any purpose of business or trade.
- 2.04. **FLOOR AREAS.** No single family residence shall be constructed without the approval of the Architectural Control Committee. All plans shall conform to minimum heated living space as determined and/or required by the Declarant.
- 2.05. **SETBACKS.** All single family residences or other authorized structures shall comply with the following setback requirements: Minimum front line setbacks as shown on the recorded map, or designated by Declarant, unless a variance to setback is granted by The City of Calera, and/or the

Declarant. Other setbacks will be as designated by record map or Declarant. The Declarant may not grant a variance in violation of the city's minimum requirements, without permission from the city.

2.06. TEMPORARY STRUCTURES. Except for the construction and development activities of Declarant and Builder, no temporary structure of any kind shall be used, or placed upon the lot, including, but not limited to trailers, campers, shacks, tents, outbuildings, or auxiliary structures without permission of the Architectural Control Committee or Declarant.

2.07. UTILITIES. The lot owner shall be solely responsible for the cost and expense of the installation of all utilities used on any lot up to the lot line. Furthermore, all electrical power transmission lines on any lot shall be required to be installed underground up to the lot line. Declarant shall not be responsible for the cost and expense of installing or maintaining any utilities, including underground electrical power, used on any lot up to the lot line. Cable television company serving subdivision shall be approved by Declarant.

2.08. DRAINAGE. The lot owner shall be responsible for the drainage of all surface waters on the lot so as not to increase the natural drainage across neighboring lots. The lot owner shall also be responsible for drainage and silt control during the construction and landscaping of his/her residence. Any lot that violates ADEM requirements for storm water runoff will be required to remedy the problem immediately. If the Declarant brings lot into compliance, the lot owner shall immediately reimburse Declarant for any and all costs incurred. If ADEM fines are imposed because of said violations, lot owner will pay all fines and attorneys fees incurred.

2.09. LOT MAINTENANCE. Each owner of any lot shall at all times keep and maintain said lot and improvements thereon in a clean, orderly, and attractive condition, maintaining and repairing the residence promptly as conditions may require. All trash, rubbish, garbage, grass, leaves, tree limbs, weeds, vines, and other waste materials shall be removed for proper disposal from a lot as soon as is practical, and prior to removal, the same shall be stored on the lot out of sight and in a neat and orderly manner so as not to interfere with the aesthetics, health or welfare of other homeowners. No such material shall be placed or stored on any street or public right of way. No open burning shall be permitted on any lot or any other part of the development, except that outdoor fireplaces, grills and chimneys may be used provided they are so constructed and equipped with fire screens as to prevent the discharge of any ashes, embers, or other particulate matter, and in compliance with local, state, and federal laws.

2.10. SIGHT EASEMENTS. No fence, wall, tree, shrub, or bush shall be erected or planted in such a way as to prevent any pedestrian or operator of a motor vehicle from having clear, open and safe scope of vision at any intersection, corner, or other adjoining of streets, or as to obstruct passage on public right of way. Height of shrubbery near intersections not to exceed 30 inches.

2.11. FENCES, CLOTHES LINES, AND MAILBOXES. No fence, wall (above the grade of the lot), or hedges may be installed in front of a residence. All walls and fences on the property are to be approved in writing by the Declarant or by the Architectural Committee, its successors, or assigns, prior to installation. No clothes lines are permitted. Mailboxes are to be of a design specified by the Declarant.

2.12. PETS. No animals, birds, or reptiles shall be kept or be possessed in the development by any person owning a lot, except for commonly accepted household pets. Any such pet shall be kept by any homeowner within the limitations of the lot and residence thereon, and no pet shall be permitted to leave said lot or residence without being controlled at all times by the owner. No kennels will be allowed.

2.13. SIGNS. No signs, billboards, posters or other advertising matter or displays of any kind shall be permitted anywhere in the development except as provided herein. The Declarant or Architectural Committee may, in its discretion, adopt and promulgate rules and regulations relating to signs which may be employed. The Declarant and builders shall be permitted to install their signage.

2.14. UTILITY EASEMENTS. Declarant, or any entity authorized by it, reserves a 10 foot easement across the back of and along each side of each lot, for the purpose of constructing, maintaining, and repairing utility lines and equipment and for water mains and storm drains, and other general use facilities; provided, however, that said easement area shall be maintained by the lot owner, except for those obligations of public authorities or utility companies. This easement may be modified and /or enlarged by Declarant if it is deemed necessary by Declarant, at his sole discretion.

2.15. NUISANCES. No substance, thing, or material shall be kept upon any lot that will emit foul or obnoxious odors, or that will cause any noise that will or might disturb the peace, quiet, comfort, or serenity of the occupant of surrounding property. No boat, boat trailer, house trailer, trailer, motor home, truck, commercial vehicle, motorcycle, golf cart, or any other similar item shall be stored in the open on any lot for a period of time in excess of twenty-four (24) hours. No satellite dishes are permitted on any lot, except those 18" or smaller, as long as it's location is approved by Architectural Committee.

2.16. RESTRICTIONS ON ACCESS. No vehicular access be permitted from any lot to public roads outside the boundaries of the subdivision except by roads constructed by the Declarant in the development, without written approval of Declarant.

2.17. MAILBOXES. All mailboxes and posts must be of a designed specified by the Declarant.

2.18. EXCEPTION FOR DECLARANT. SECTIONS 2.03 through 2.17 shall not apply to Declarant during the course of development of the property.

ARTICLE III. MEMBERSHIP AND VOTING RIGHTS

Membership

3.01. Every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

Voting Classes

3.02. The Association shall have two classes of voting membership:

(a) Class A members shall be all Owners (with the exception of the Declarant and any Owner of a vacant lot for the first four months following the original conveyance from the Declarant) and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any one Lot.

(b) The Class B member(s) shall be the Declarant and any Owner of a vacant lot for the first four months following the original conveyance from the Declarant and shall be entitled to three (3) votes for each Lot owned.

ARTICLE IV. COVNANT FOR MAINTENANCE ASSESSMENTS

Creation of Lien and Personal Obligation of Assessments

4.01. Each Class A Member/Owner of a Lot by acceptance of a deed, whether or not it shall be so expressed in the deed, is deemed to covenant and agree to pay to the Association; annual assessments or charges and special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be also the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to successors in title unless expressly assumed by them.

Purpose of Assessment

4.02. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvements and maintenance of the Common Area.

Maximum Annual Assessment

4.03. Until January 1, 2006 the maximum annual assessment shall be \$125 per Lot.

- (a) From and after January 1, 2006, the maximum annual assessment may be increased each year not more than five percent (5%) above the maximum assessment for the previous fiscal year without a vote of the membership.
- (b) From and after January 1, 2006, the maximum annual assessment may be increased above five percent (5%) by the vote or written assent of two-thirds (2/3) of each class of members.
- (c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Special Assessments for Capital Improvements

4.04. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessments applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, repair, or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Notice and Quorum for Any Action Authorized Under Sections 4.03, 4.04

4.05. Written notice of any meeting called for the purpose of taking any action authorized under Section 4.03 or 4.04 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. The presence at the meeting of members entitled to cast, or of proxies entitled to cast, one-tenth (1/10) of the votes of each class of membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these Bylaws. If, however, such quorum shall not be present or represented at any meeting, the members present shall have power to continue the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Uniform Rate of Assessment

4.06. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Date of Commencement of Annual Assessments: Due Dates

4.07. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the common area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Effect of Nonpayment of Assessments: Remedies of the Association

4.08. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of eighteen (18) percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property, in accordance with the laws of the state of Alabama. No owner may waive or otherwise escape liability for

the assessments by nonuse of the Common Area or abandonment of the Lot.

Subordination of Lien to Mortgages

4.09. The lien of the assessments shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of assessment as to payments that became due prior to the sale or transfer. No sale or transfer shall relieve the Lot from liability for any assessments thereafter becoming due.

ARTICLE V. ARCHITECTURAL CONTROL

Architectural Restrictions

5.01 No building, fence, wall, or other structure shall be commenced, erected, placed, moved on to, permitted, or maintained upon the Properties, nor shall any exterior addition, change, or alteration be made until the plans and specifications (including a description of any proposed new use) have been submitted to and approved in writing as to harmony or external design and location in relation to surrounding structures and topography by the Declarant until such time as the Declarant shall turn this responsibility over to the Association, and thereafter either the Board of Directors of the Association, or an architectural committee composed of three (3) or more representatives appointed by the Board. In the event the Declarant, Board, or its designated committee, as the case may be, fails to approve or disapprove the design and location within thirty (30) days after the plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. Such plans and specifications shall be in such form and shall contain such information as may be required by the Declarant Board or its designated committee, but in any event shall include: (a) a site plan of the lot showing the nature, exterior color scheme, kind, shape, height, materials, and location with respect to the particular lot, including proposed front, rear, and side setbacks and free spaces, if any are proposed, of all structures, the location thereof with reference to structures on adjoining portions of the property, and the number and locations of all parking spaces and driveways on the lot, (2) a clearing plan for the particular lot showing the location of sanitary sewer service lines, and such other information required by the Declarant, Board, or its designated committee, as the case may be, (3) a drainage plan, including a construction drainage plan for silt control, and (4) a plan for landscaping.

ARTICLE VI. GENERAL PROVISIONS

Enforcement

6.01. In the event of a violation or breach of any of these general covenants, restrictions, and

easements or any amendments thereto by a lot owner, or family or agent of such lot owner, the Association, the owners of lots, Declarant, its successors and assigns, or any party to whose benefit these general covenants, restrictions, and easements inure shall have the right to proceed at law or in equity to compel the compliance with the terms and conditions hereof, to prevent the violation or breach of said general covenants, restrictions, and easements, to sue for and recover damages, or take all such courses of action at the same time, or such other legal remedy it may deem appropriate. No delay or failure on the part of the aggrieved party to initiate an available remedy set forth herein shall be held to be a waiver of that party or an estoppel of that party or of any other party to assert any right available to him upon the recurrence or continuation of said violation or the occurrence of a different violation. No lot owner may sue the Declarant for his actions in this development. 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 at law or in equity. Any party to a proceeding who succeeds in enforcing a general covenant, restriction, or easement or enjoining the violation of the same against a lot owner may be awarded a reasonable attorney's fee against such lot owner.

Severability

6.02 Invalidation of any one of these covenants or restrictions by judgement or court order shall in no wise affect any other provisions, which shall remain in full force and effect.

Amendment

6.03 The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by an instrument signed by not less than two-thirds of the Lot Owners. Any amendment must be recorded.

Annexation

6.04 (a) Additional residential property and Common Area property may be annexed to the Properties with the consent of two-thirds ($2/3$) of each class of members.

(b) Additional land within the area described in Exhibit "B" which is attached hereto and made a part hereof by reference may be annexed by the Declarant without the consent of members, provided that the Federal Housing Administration (FHA) or the Veterans Administration (VA) determines that the annexation is in accord with the general plan heretofore approved by them.

FHA/VA Approval

6.05 As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions, and Restrictions.

Zoning and Specific Restrictions

6.06 The general covenants, restrictions, and easements herein shall not be taken as permitting any action or thing prohibited by the applicable zoning laws, or the laws, rules or regulations of any governmental authority, or by specific restrictions imposed by any deed. In the event of conflict, the most restrictive provision of such laws, rules, regulations, deeds, or the general covenants, restrictions, and easements shall be taken to govern and control.

Grantees' Acceptance of Deed

6.07 The grantee of any lot subject to the coverage of these general covenants, restrictions, and easements, by acceptance of the deed or other instrument conveying an interest in or title to, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent owner of such lot, shall:

a. accept such deed or other contract upon and subject to each and all of these general covenants, restrictions, and easements herein contained and

b. agrees that Declarant makes no representation or warranties regarding the condition of the property. Grantee has the obligation prior to acceptance of the deed to determine, either personally or through a representative of Grantee's choosing, any and all conditions of the property material to Grantee's decision to buy the property, including without limitation, subsurface conditions, including the presence or absence of sinkholes, mining activity, wells, or buried tanks or other objects; soil conditions (including but not limited to proper compaction of fill materials on the property), utility and septic tank availability and condition. Grantee accepts property in its "AS IS" condition.

Indemnity for Damages

6.08 Each and every lot owner and future lot owner, in accepting a deed or contract for any lot subject to these general covenants, restrictions, and easements, agrees to indemnify and defend The Association, the Declarant against and hold The Association and the Declarant harmless from any damage caused by such lot owner, or the contractor, agent or employees of such lot 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.

Interpretation by Declarant

6.09 Declarant shall have the right to construe and interpret the provisions hereof, and in absence of an adjudication by a court of competent jurisdiction to the contrary, its construction or interpretation shall be final and binding as to all persons or property benefitted or bound by the provisions hereof.

Assignment by Declarant

6.10 In the event that Declarant should sell the development to a third party, Declarant shall be empowered to assign its rights hereunder to said third party and, upon such assignment said third party shall have all the rights and be subject to all the duties of Declarant hereunder.

Rules and Regulations

6.11 All homeowners shall at all times comply with all rules and regulations, orders, laws, ordinances, statutes, and decrees of any governmental or political entity or persons, and any rules and regulations adopted by The Association, Declarant, or their successors, assigns, or designees.

Actions of The Association in regard to right of ways at sufferance to Governmental Entity

6.12 The action of The Association in maintaining the entrance and right-of-ways of the subdivision is at the sufferance of the governmental agency having the title to the same pursuant to the recording of the subdivision plat.

Conveyance or Mortgage of Common Area

6.13 The common area cannot be conveyed or mortgaged without the consent of at least two-thirds (2/3) of the lot owners (excluding the declarant).

ARTICLE VII. PARTY WALLS

General Rules of Law to Apply

7.01. Each wall built as part of the original construction of the homes upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article VII, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Sharing of Repair and Maintenance

7.02 The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to that use.

Destruction by Fire or Other Casualty

7.03 If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration in proportion to use, without prejudice, however, to the right of any Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Weatherproofing

7.04 Notwithstanding any other provision of this Article, an Owner who by negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against the elements.

Right of Contribution Runs With the Land

7.05 The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to the Owner's successors in title.

Arbitration

7.06 In the event of any dispute concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and those arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

ARTICLE VIII. EXTERIOR MAINTENANCE

8.01. In the event an Owner of any Lot in the Properties shall fail to maintain the premises and improvements in a manner satisfactory to the Board of Directors, the Association, after approval by two-thirds (2 /3) vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon the parcel and to repair, maintain, and restore the Lot and the exterior of the buildings and any other improvements. The cost of this exterior maintenance shall be added to and become part of the assessment to which the Lot is subject.

Declarant hereby declares that said provisions of the Original Declaration as so amended and supplemented shall run with the land and be binding upon, and shall inure to the benefit of, the Subject Property, and any future additions thereto, and all parties having or acquiring any right, title or interest in and to the Subject Property or any part thereof, and their successors in interest.

IN WITNESS WHEREOF, the undersigned, **Danny F. Acton**, as the **Managing Member of Kinsale Garden Homes**, has hereunto set his hand and seal on this 8th day of October, 2 004.

ATTEST:

Heidi A. Jan
my commission expires 7-4-08

Declarant
Acton Homes, Inc.

Danny F. Acton
Danny F. Acton
Managing Member