

CHINABERRY

Phase II
Covenants & Restrictions

As recorded
In Map Book 34, Page 91 in the
Probate office of Shelby County, Alabama

STATE OF ALABAMA
SHELBY COUNTY

I. EXCLUSIVE RESIDENTIAL USE AND IMPROVEMENTS

1. All lots in the tract shall be known and described as residential lots and shall be used for single family residential purpose exclusively. No lot shall be subdivided.
2. No structure shall be erected, altered, placed or permitted to remain on any residential building lot other than one (1) detached single family dwelling not to exceed two and one-half (2 ½) stories, or forty (40) feet in height, and private garage, and other outbuildings incidental to and necessary for proper residential use of the lot. No mobile homes or modular housing is allowed. Separate garage buildings are permitted. Any outbuilding will be in conformity to the standards set herein and approved by the Architectural Control Committee, (hereinafter referred to as "Committee").
3. Notwithstanding anything to the contrary herein, the undersigned Developer or its assigns shall be permitted to construct and maintain on one (1) lot only a structure and related facilities designed and used as a construction field office including the lots subject to these covenants and adjoining land improvements thereon owned by the undersigned or its assigns.
4. The front line of all residences and other structures must be set back no less than thirty feet (30) from the dedicated right of way road, unless indicated otherwise on said recorded plat. No structure of any nature may be placed closer to the side boundary line than 10 feet on either side. No structure may be located nearer than thirty (30) feet to the rear boundary of the lot. The Committee reserves and shall have the right to

grant reasonable variances from the set back lines requirements. No structure other than the residence or garage may be constructed closer to the ingress and egress road than the back of the residential building. Any buildings of any nature, including gazebos, decks and outbuildings built on said property must conform to a residential nature and must be approved by the Architectural Control Committee.

5. No lot shall be used except for residential purposes. No dwellings shall be erected containing less than one thousand four hundred (1400) square feet of living (heated) area on the main level of a one-story dwelling exclusive of porches, garages and basements. Any one and one-half (1 ½) story dwelling must contain a minimum of one thousand six hundred (1600) square feet of heated (living) area with no less than one thousand (1000) square feet on the main level, exclusive of porches, garages and basements. Any two story must contain approximately eighteen hundred (1800) square feet of heated (living) area with no less than nine hundred (900) square feet on the main level. The lower level of a split foyer home is not included as finished floor area.
6. The entrance way and all areas on the recorded plat, which are depicted as common area or beautified easements shall be for the purpose of maintenance and upkeep considered common area, and shall be maintained by the Chinaberry Homeowner's Association, (hereinafter referred to as "Association") as hereinafter provided.

II. GENERAL REQUIREMENTS

1. It shall be the responsibility of each lot Owner to prevent the development of any unclean, unsightly or unkempt conditions of buildings or grounds on such lot which shall tend to decrease the beauty of the specific area or of the neighborhood as a whole.
2. No refuse pile or unsightly object shall be allowed to be placed or suffered to remain upon any part of the property, including vacant lots. The undersigned reserve the right (after 10 days notice to the Owner) to enter any residential lot for the purpose of removing trash or refuse which in the opinion of the undersigned detracts from the overall beauty and safety of the Development, and may charge the owner a reasonable cost for the services, which charge shall constitute a lien upon such lot enforceable by appropriate proceedings at law or equity. This provision shall not apply to the undersigned Developer and Builders or their assigns/s during the sales and development period, such sales period to extend until the last lot is sold by the undersigned developer.
3. No animals, livestock, or poultry of any kind shall be raised, bred or

kept on any lot, except dogs and/or cats. Household pets may be kept provided they are not kept, bred, or maintained for any commercial purpose, subject to appropriate zoning ordinances.

4. No noxious or offensive trade or activity shall be carried on upon any lot nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.
5. No oil drilling, oil development operation, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.
6. No trash, garbage or other refuse shall be dumped, stored or accumulated on any lot. Trash, garbage or other waste shall not be kept on any lot except in sanitary containers or garbage compactor units. Garbage container, if any, shall be so placed or screened by shrubbery or other appropriate material approved in writing by the Committee as not to be visible from any road or within sight distance of the lot at any time except during refuse collection. No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted, except during the construction period, or with approval of or supervision by the Fire Department having jurisdiction over the subdivision.
7. No structure of a temporary character, trailer, basement, tent or shack shall be used at any time as a residence either temporarily or permanently. There shall not be occupancy of any dwelling until the interior and exterior or dwelling is completed and Certificate of Occupancy issued.
8. No sign of any kind shall be displayed to the public view on any lot except one (1) professional sign of not more than two (2) square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction and sales period. All signs shall comply with design specifications of the Committee. No signs shall be nailed to trees. This provision shall not apply to the Developer or Builders or their assigns during the sales period.
9. When the construction of any building is once begun, work thereon must be prosecuted diligently and continuously and must be completed within (12) months.


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10. Whenever any curbs or gutters must be removed and/or replaced, removal must be done in a manner (saw) to be in compliance with the Committee and in conformity with the subdivision.
11. Outside air conditioning units may not be located in the front yard or any required side yard on corner lots.
12. All dwellings will have wooden, vinyl or aluminum-clad windows. Wood frame, vinyl, or aluminum-clad windows will be used exclusively on the sides, fronts and rears of the dwellings constructed. Unpainted aluminum windows **may not** be used.
13. No concrete block work, including foundations, concrete block steps, walkways, walls or any other concrete block work, whether painted, or otherwise, shall show above ground or from the exterior or any building. All dwellings will have brick, stucco, or stone on (3) sides of the foundation with no exposed block.
14. Hardie plank, vinyl siding, brick, stucco, or stone shall be permitted to be installed on exterior of any structure. No vertical siding shall be used on the construction of any dwelling, except as approved by the Committee.
15. No fencing shall extend nearer the street than the rear line of the dwelling. All fences must be black vinyl coated chain link, wrought iron or wood and shall not exceed six (6) feet in height. All fence plans must be submitted to the Committee for review and approval.
16. No individual water supply system shall be permitted on any lot unless such system is located, constructed and equipped in accordance with the requirements, standards and recommendations of the both state and local public health authorities. Approval of such system as installed shall be obtained from such authority.
17. No automobiles will be stored on any lot or kept on blocks unless in the basement of a structure. No tractor trailer trucks, panel vans or other commercial truck in excess of one (1) ton classification shall be parked or stored on any lot.
18. No satellite, microwave dishes or television or radio antennas larger than 18" in diameter shall be placed on any lot in the subdivision; unless approved in writing by the Committee.

19. No individual sewage disposal system shall be permitted on any lot unless such system is designated, located and constructed in accordance with the requirements, standards, and recommendations of both state and local public health authorities approval of such system as installed shall be obtained from such authority.
20. Upon the completion of a residence, all front and side yards will be landscaped with sod. The rear yard may be seeded or sprigged.
21. The roof pitch on any residence shall not be less than 8 & 12 unless first approved in writing by the Committee. All roof vents and pipes shall be painted as near the color of the roof as possible, and shall be located on the rear of the structure and shall not be visible from the front, if possible.
22. All porches on the front and sides of any dwelling shall be supported by the foundation of the structure, unless approved by the Committee.
23. No cantilevered or foundation supported chimney chases shall be allowed on the front side of any structure.
24. All driveways visible from the street must be concrete. All property owners shall maintain all mailboxes, and decorative street lamps, if applicable.
25. No lot shall be cultivated for crops of any sort, except for gardens of reasonable size, which are to be located in the rear of any dwelling.
26. All in-ground pools and above ground pools must have Architectural Control Committee approval.
27. All garage doors must be kept closed at all times except when garage is in use and may not face the front of dwelling without written approval of the committee.
28. No clothesline for the purpose of hanging clothes, wash or laundry shall be permitted or installed on any lot.
29. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and five (5) feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street property lines extended. The same sight line limitations shall apply on any lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be

permitted to remain within heights to prevent obstruction of such sightless.

30. Developer or its transferors or assigns reserve the right to make any road or other improvements abutting on said property, to change or extend the present road or other street grades, if necessary, without liability to the lot owners their heirs and assigns for damages and further reserves the right to change or modify the reservation on any property in said development.
31. During construction, all builders must keep the homes, garages and building sites clean. All builders are to keep the house and lot attractive. Debris will not be dumped in any area of the Development.
32. The undersigned reserve, for themselves, their successors and assigns, the right to use, dedicate and /or to the appropriate utility company or companies, rights of way easements on, over across or under the ground to erect, maintain and use utilities, electric and telephone poles, wires, cables, conduits, storm sewer, sanitary sewers conveniences or utilities on, in and over strips of land fifteen (15) feet in which along the rear property line of each lot and ten (10) feet in width along each side line of each lot.
33. No lot shall be sold or used for the purpose of extending any public or private road, street, or alley except by the prior written consent of the Developer, it's successors and assigns.
34. To insure the maintenance of the natural beauty, no Owner shall be allowed to dam up the creeks, which flow through, said Development nor shall he change the flow of said creek.
35. Motorized vehicular traffic of any type is strictly prohibited on any common area of beautification in the Development except as may be required by the Developer or the Homeowner's Association for maintenance or construction.
36. Silt fences must be installed and roads cleaned of all dirt, silt and rocks as needed.
37. At the time of construction of a dwelling on each lot, there must be erected a mailbox bearing the house number. All mailboxes and house numbers must be erected by the lot owner in strict conformity with design criteria established by the Committee, which will be common for every lot.

III.

ARCHITECTURAL CONTROL COMMITTEE

1. All plans and specifications including plot plans, grading and drainage plans and exterior texture, design and color selections of residences and plans for all mailboxes and entrance columns serving any lot in the Development shall be first filed with and approved by the Committee before any construction is commenced. The committee shall have authority to require modifications and changes in plans and specifications it deems necessary in its sole judgement to seek conformity of the proposed dwelling with restrictions hereof and the architectural integrity of the entire subdivision. The Committee will consist of no more than three (3) persons who will be designated by the Developer, until such time as Developer relinquishes the authority to appoint members to the Committee the Homeowner's Association.
2. The authority to review and approve any plans and specifications as provided herein is a right and not an obligation. Contractors and Owner's shall have the sole obligation to oversee and to construct dwellings in accordance with the restrictions hereof and the plans and specifications approved by the committee together with any and all governmental rules and regulations.
3. Any remodeling, reconstruction, alterations or additions to an existing residence shall not require the written approval of the Committee, but shall comply with all restrictions and covenants.
4. Neither the Committee nor any architect nor agent thereof nor the Developer shall be responsible to check for any defects in any plans or specifications submitted, revised or approved in accordance with the foregoing provisions, not for any structural or other defects in any work done according to such plans and specifications. **EACH LOT OWNER, BY ACCEPTANCE OF A DEED TO ANY LOT DOES HEREBY WAIVE AND RELEASE THE COMMITTEE AND DEVELOPER AND ANY OF THEIR RESPECTIVE AGENTS, OFFICERS, DIRECTORS, LOT OWNERS AND SUCCESSORS AND ASSIGNS, FROM ANY LIABILITY OF ANY NATURE WHATSOEVER ARISING FROM DAMAGE, LOSS OR EXPENSE SUFFERED, CLAIMED, PAID OR INCURRED BY ANY LOT OWNER ON ACCOUNT OF ANY DEFECTS IN ANY DEVELOPMENT PLANS SUBMITTED TO OR APPROVED BY THE COMMITTEE, ANY DEFECTS RESULTING IN ANY WORK DONE IN ACCORDANCE WITH SUCH PLANS OR OTHER DATA SUBMITTED PURSUANT TO THE REQUIREMENTS OF THIS ARTICLE AND ANY INJURY TO SUBJECT PROPERTY OR PERSON, INCLUDING DEATH, ARISING FROM ANY DEFECT IN ANY IMPROVEMENTS CONSTRUCTED ON SUCH OWNER'S LOT.**



5. **UNDERGROUND CONDITIONS.** THE SUBJECT PROPERTY MAY BE LOCATED IN AN AREA WHICH INCLUDES UNDERGROUND MINES, TUNNELS, SINKHOLES AND SUBSURFACE CONDITIONS. THE APPROVAL OF DEVELOPMENT PLANS BY THE COMMITTEE OR DEVELOPER TO ANY LOT OWNER THAT THE SURFACE OR SUBSURFACE CONDITIONS OF ANY LOT ARE SUITABLE FOR THE CONSTRUCTION OF A DWELLING OR OTHER STRUCTURES THEREON. IT SHALL BE THE SOLE RESPONSIBILITY OF EACH LOT OWNER TO DETERMINE THE SUITABILITY AND ADEQUACY OF THE SURFACE AND THE SUBSURFACE CONDITIONS OF THE LOT. NEITHER DEVELOPER NOR THE COMMITTEE SHALL BE LIABLE OR RESPONSIBLE FOR ANY DAMAGE OR INJURY SUFFERED OR INCURRED BY A LOT OWNER OR ANY OTHER PERSON AS A RESULT OF SURFACE OR SUBSURFACE CONDITIONS AFFECTING A LOT OR ANY PORTION THEREOF, INCLUDING, WITHOUT LIMITATION, ANY SURFACE OR SUBSURFACE DRAINAGE OR UNDERGROUND MINES, TUNNELS, SINKHOLES OR OTHER CONDITIONS OR TYPES OF GROUND SUBSIDENCE OCCURRING ON OR UNDER ANY LOT.
6. **Charges/Fees.** The Committee shall have the right to establish, amend, change and modify from time to time reasonable charges and fees for the review of any Development Plans submitted pursuant to the provisions hereof. Furthermore, the Committee shall, upon request and at reasonable charges, furnish to any Lot Owner a written certificate setting forth whether all necessary Committee approvals have been obtained in connection with any dwelling or other improvements on any Lot.
7. **Variances.** The Committee, in its sole and absolute discretion, shall have exclusive right to grant variances with respect to any of the matters set forth in these Protective Covenants. Any variance approved by the Committee shall be in writing.

IV

COVENANT – GENERAL

1. The Covenants and restrictions herein shall be deemed to be covenants running with the land. If any person shall violate or attempt to violate any such restrictions or covenants, it shall be lawful for the undersigned or any person or persons owning any lot on said land: (a) to prosecute proceedings at law for the recovery of damages against the person or persons so violating or attempting to violate any such covenant or restriction for the purpose of preventing such violating, provided, however, that the remedies in this paragraph contained shall be construed as cumulative of all other remedies now or hereafter provided by law.



2. These covenants and restrictions may be amended or altered by the Developer during such period of time as the Developer owns as much as 25% of the lots in the subdivision, or the consent of a majority vote of lot Owners and agreement of the Developer.

V

MEMBERSHIP IN ASSOCIATION

1. The structure of the Chinaberry Homeowner's Association is contained in it's Articles and Bylaws which is recorded separately.
2. Every owner of a Lot constituting Member's Property shall, by virtue of such ownership, be a Member of the Association. Membership shall be appurtenant to, and may not be separated from the ownership of any property which is Member's Property.
3. The Association shall have one (1) class of voting membership. All Lot Owners shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all persons shall be member's; however, the vote for such Lot shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any Lot. Each Lot Owner, by acceptance of a deed to a Lot, does hereby acknowledge and agree that (a) Developer, for so long as Developer owns any portion of the Development, shall be exclusively entitled to take all actions and vote on all matters to be voted on by the Members of the Association in the manner set forth in the Articles and Bylaws.
4. The Association shall have the right and obligation to maintain or help maintain the Common Area and facilities within the Subject Property which serve the Lot Owners, regardless of whether the Common Area and facilities are owned by Developer or the Lot Owner, have been conveyed or dedicated to a municipality or other governmental agency, and the amount of Common Area maintenance services to be provided by Association, if any, shall be determined by the Board of the Association. The cost of any such Common Area maintenance shall be an expense of the Association, and shall be covered by the annual assessments set forth in article VII hereof. No Member shall be entitled to any reduction of or credit on such annual assessment due to the Member or other person performing Common Area maintenance himself instead of having the Common Area maintenance performed by the Association. Developer shall have the right, but not the obligation, at such time or times as may be determined by Developer, in its sole discretion, to convey any Lot, or other portions of the Subject Property to the Association or any municipality.

COVENANT FOR ASSESSMENTS

1. For the purpose of providing funds for use as specified in Article VIII hereof, the Association shall assess against each Lot, a charge for (i) annual assessments or charges, (ii) special assessments for the purpose as provided herein, such assessments to be established and collected as hereinafter provided, and (iii) individual assessments which may be levied against any Lot and Lot Owner thereof as a result of such Lot Owner's failure to comply with the terms of these Protective Covenants. The annual assessment shall be established by the Association in accordance with its rules, regulations and bylaws. Lots owned by the Developer shall not be subject to any assessment by the Association, be it annual, special or individual. In addition to the annual assessments, the Association may levy, at any time a special assessment, applicable to that year only for the purpose of defraying in whole or in part the cost of any construction reconstruction, expected or unexpected repair or replacement of any of the Common Areas, provided that any such assessment must have the assent and approval of (a) at least fifty-one (51%) of those voting, whether by proxy or in person, provided that the appropriate notice was given and that a quorum exists, at a meeting duly called for this purpose and (b) for so long as Developer owns any portion of the Development, the approval of the Developer. Any expenses, including all attorney's fees, court costs and all other expenses paid or incurred by the Association or the Committee in connection herewith in enforcing any of the provisions of these Protective Covenants against a specific Lot Owner shall be deemed an individual assessment against the Lot Owner and the respective Lot owned by such Lot Owner. Such individual assessment shall be levied by the Association and shall be specified to the Lot Owner, which notice shall also specify the due date for the payment of same. Both annual and special assessments for all Lots within the Subject Property shall be fixed at a uniform rate. Each such Lot shall be charged with and subject to a lien for the amount of the annual, and any special or individual assessment. Any assessments (whether annual, amount of the annual, special or individual) which are not paid on or before the due date of the same shall bear interest from and after such due date at a rate equal to the lesser of eighteen (18%) per annum or the highest rate which may be charged to such Lot Owner by the law. In addition to interest, any assessments not paid by the due date for the same shall be subject to a late charge which the Board may from time to time establish.
2. Annual assessments for the Subject Property shall commence on January 1 each year and shall be paid in advance on January 1 of each year. For the first purchaser of a lot from the Builder, annual assessments shall commence

as to each Lot on the first day of the first month following occupancy by the purchaser and shall be prorated for the remainder of the year after occupancy. Builders will not pay assessments unless a minimum of six (6) months has elapsed from the date of the Lot closing and the date when the assessment is due. If a Builder still owns an unoccupied Lot or Dwelling after the next assessment due date. The Board 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 and any special assessment shall be sent to every Lot Owner. The due date for the payment of annual assessments may be changed by the board in such notice (but such due date shall be, at a minimum, thirty (30) days from the date of such notice), and the due date for the payment of special assessment shall be stated in such notice (but such due date shall be, at a minimum, thirty (30) days from the date of such notice.

3. In the event any assessments or other amounts due to the Association are not paid by any Lot Owner when the same comes due, then, in addition to all other rights and remedies provided by law or in equity, the Association, acting through the Board or through any of its duly authorized officers or representatives, may undertake any of the following remedies:

- (a) The Association may commence and maintain a suit at law against the Lot Owner for a personal money judgement to enforce all such charges and obligations for assessments and other amounts due to the Association, which amounts shall include the late charge and interest specified above as well all attorney's fees, court costs and all other expenses paid or incurred by the Association in connection therewith.
- (b) The Association may enforce the lien created pursuant to Section VII below as hereinafter provided. The lien created pursuant to Section VII below shall secure payment of any and all assessments (annual, special and individual) levied against any Lot or Lot Owner, all late charges and interest as provided above as well as provided above as well as attorney's fees, court costs and all other expenses paid or incurred by the Association in attempting to collect the assessments and in maintaining any legal action in connection therewith. If any assessments and other charges remain unpaid for more than sixty (60) days following the due date of the same, then the Association shall make written demand on defaulting Lot Owner, which demand shall state the date and amount of delinquency. If such delinquency is not paid in full within ten (10) days after the giving of such demand notice, then the Association may file a claim of a lien against the Lot of such delinquent Lot Owner, which claim shall be executed by any member of the Board or any officer of the

Association and may be foreclosed in the same manner as a foreclosure of a mortgage on real property under the laws of the State of Alabama as the same may be modified or amended from time to time. The Association shall have the right and power to bid at any such foreclosure sale and to purchase, acquire, hold, lease, mortgage, convey and sell any such Lot purchased at any such foreclosure proceeding. Each Lot Owner, by acceptance of a deed to any Lot, shall be deemed to (i) grant and vest in the Association and/or its agents the right and power to exercise the power of sale granted herein and foreclose the lien created herein, (ii) grant and vest in the Association and/or its agents the right and power to bring all actions against such Lot Owner personally for the collection of all amounts due from such Lot Owner, (iii) expressly waive any objection to the enforcement in foreclosure of the lien created herein, and (iv) expressly waive the defense of the statute of limitations which may be applicable to the commencement of any suit or action for foreclosure. No Lot Owner (other than Developer) may waive or otherwise be exempt from the liability to pay the assessments provided herein.

3. **Notice.** Written notice of any meeting called for the purpose of taking any action authorized under Section VI above shall be sent to all Lot Owners not less than thirty (30) days but no more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence either in person or by proxy, of the holders of at least ten percent (10%) or more of all votes in the Association shall constitute a quorum.

VII

IMPOSITION OF CHARGE AND LIEN UPON PROPERTY

1. All Lots shall be subject to a continuing lien for assessments levied by the Association in accordance with the provisions of these Protective Covenants. The annual, special and individual assessments, together with interest thereon and the costs of collection thereof including reasonable attorney's fees as herein provided, shall be a charge on and shall be a continuing lien upon the Lot against which each such assessment or charge is made.
2. **Personal Obligation of Members.** Each Member, by acceptance of a deed, other conveyance to a Lot, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay the Association the annual, special individual assessments.
3. **Subordination of Lien to Mortgages.** The lien of any assessment or charge

authorized herein with respect to any Lot is hereby made subordinate to the lien of any *bona fide* mortgage on such Lot if, but only if, all assessments and charges levied against such Lot falling due on or prior to the date such mortgage is recorded has been paid. The sale or transfer of any Lot pursuant to a mortgage foreclosure proceeding or a proceeding in lieu of foreclosure or the sale or transfer of such Lot pursuant to a sale under power contained in a mortgage on such property shall extinguish the lien for assessments falling due prior to the date of such sale, transfer or foreclosure, but the Association shall have a lien on the proceeds of such sale senior to the equity or right of redemption of the mortgagor. The foregoing subordination shall not relieve a member whose Lot has been mortgaged of his personal obligation to pay all assessments and charges falling due during after the mortgaging of any Lot, waive, relinquish or quitclaim in whole or in part the right of the Association to assessments and other charges collectible by the Association with respect to such property coming due during the period while such property is or may be held by a mortgagee or mortgagees pursuant to such sale or transfer.

VIII

USE OF FUNDS

1. **Use of Funds.** The Association shall apply all funds received by it pursuant to these Restrictions or as set forth in the Articles or Bylaws, and from any other source, reasonably for the benefit of property owned by the Association and by Association Members and specifically to the following uses, unless other uses are approved by 51% of the votes of Members of the Association, and with the understanding that, at the Association's discretion, funds shall be applied to operations and maintenance before being applied to capital improvements: (i) repayment of principal and interest of any loans of the Association; (ii) the costs and expenses of the Association for the benefit of the Subject Property, Lot Owners and Residents by devoting the same to the acquisition, construction, reconstruction, conduct, alteration, enlargement, laying, renewal, replacement, repair, maintenance, operation, management and subsidizing of such of the following as the Board, in its discretion, may from time to time establish or provide: any or all projects, services, facilities, studies, programs, systems and properties relating to: parks, recreational facilities or services, walkways, trails, benches, street lights, curbing, gutters, sidewalks, landscaping, directional and informational signs, subdivision entrance features, walls and signs; contracts. equipment and labor for general maintenance and clean-up; neighborhood and Association parties, festivities and social activities; newsletters and pamphlets.
2. **Obligations of Association with Respect to Funds.** The Association shall not be obligated to spend in any calendar year all the sums collected in such year by way of annual, special or individual assessments or otherwise, and may carry forward as surplus any balances remaining; nor shall the Association be obligated to apply any such surpluses to the reduction of the amount of the annual, special or individual assessments in the succeeding

year, but may carry forward from year to year such surplus as the Board in its absolute discretion may determine to be desirable for the greater financial security of Association and the effectuation of its purposes. The Association does not assure that the services described in Section VIII.1 will be provided and nothing herein shall obligate the Association or its Directors to undertake to provide such services. The Association shall provide to all Members of the Association an annual accounting of funds expended and balances remaining within one hundred twenty (120) days after the end of any calendar year, such accounting to be at the Association's expense.

3. **Authority of Association to Contract.** The Association shall be entitled to contract, subject to the last sentence of section 4, with any corporation, firm or other entity for the performance of the various undertakings of the Association specified in Section VIII.1, and such other undertakings as may be approved by 51% of the votes of the Members of the Association, and the performance by any such entity shall be deemed the performance of the Association hereunder.
4. **Authority of Association to Borrow Money.** The Association shall be entitled to borrow money for the uses specified in Section VIII.1, or other uses if approved by 51% of the votes of the Members of the Association, up to an outstanding principal balance of \$10,000.00. Any borrowing over such amount shall require the approval of 51% of the votes of the Members of the Association. Further, the Association shall not incur outstanding contractual and debt obligations exceeding an aggregate of \$20,000.00 at any given point in time (not including any prospective or actual liability arising out of a lawsuit not based on unpaid accounts), without the approval of 51% of the votes of the Members of the Association.
5. **Authority of Association to make Capital Expenditures.** The Association shall be entitled to make capital expenditures for the uses specified in Section VIII.1 or other uses as may be approved as provided therein, up to an amount not to exceed \$10,000.00, as limited by the last sentence in Section VIII.4. Any capital expenditure in excess of \$10,000.00 shall require the approval of 51% of the Members of the Association.

IX

EASEMENTS

1. **Inspection.** Developer does hereby establish and reserve for itself, the Association, the Committee and their respective successors and assigns, a permanent and perpetual non-exclusive easement over, across, through and upon each Lot for the purpose of inspecting each Lot and any Dwelling constructed thereon in order to determine the compliance with the provisions of these Protective Covenants and to otherwise perform any of their duties or undertake any of the action authorized or permitted to be taken by any of them pursuant to these Protective Covenants.

2. **Utilities.** Developer does hereby establish and reserve for itself, its successors and assigns, a permanent and perpetual non-exclusive easement over, across, through, upon and under those portions of any Lot upon which the Developer has reserved an easement, as reflected on the recorded Subdivision Plat for such Lot, which easements may be used for the purpose of installing, erecting, maintaining and using above and below ground utility and cable television lines, poles, wires, cables, conduits, storm sewers, sanitary sewers, conveniences, appurtenances and other utilities. Developer does hereby establish and reserve for itself, its successors and assigns, a permanent and perpetual non-exclusive easement over, across, through, upon and under all portion of the Common Area for the purpose of installing, erecting, maintaining and using thereon above and below ground utility and cable television lines, pipes, poles, wires, cables, conduits, storm sewers, conveniences and other utilities.
3. **Rights of Others.** The easements reserved in Sections 1 and 2 may be used by public or private utility companies providing utility services to Chinaberry or the property described on **Exhibit B** hereto.
4. **Drainage.** Drainage shall not be obstructed nor be diverted from drainage swales, storm sewers and/or utility easements as designated herein, or as may hereafter appear on any plat of record in which reference is made to these Protective Covenants. Developer may cut drainways for surface water wherever and whenever such action may appear to Developer to be necessary in order to maintain reasonable standards of health and appearance. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health and appearance. Except as provided herein, existing drainage shall not be altered in such a manner as to divert the flow of water onto an adjacent Lot or Lots. The provision hereof shall not be constructed to impose any obligation upon a Developer to cut such drainways.
5. **Grading.** Developer may at any time make such cuts and fills upon a Lot or other part of the Subject Property and so such grading and moving of earth as, in its judgement, may be necessary to improve or maintain the streets in or adjacent to the Subject Property and to drain surface waters therefrom, and may assign such rights to Shelby County or to any municipal or public authority; provided however, that after the principal Dwelling upon a Lot shall have been completed in accordance with the Development Plans, the rights of Developer under this Section 5 shall terminate with respect to all parts of each Lot other than the easement area thereof, except that Developer or any such municipal or public authority shall thereafter have the right to maintain existing streets and drainage structures.

USE OF COMMON AREAS

1. **Easement of Enjoyment of Community.** Every Owner, by reason of such ownership, shall have a right and easement of enjoyment in and to Common Area or Association Land, and such easement shall be appurtenant to and shall pass with every Lot upon transfer, All Residents who are not Members shall have non-transferable privilege to use and enjoy Common Areas and Association Land for as long as they are Residents within the defined meaning of that term. All such rights, easements, and privileges, however, shall be subject to the right of the Association to adopt and promulgate reasonable rules and regulations pertaining to the use of Common Areas and Association Land which shall enhance the preservation of such facilities, the safety and convenience of the users thereof, or which, in the discretion of the Association shall serve to promote the best interests of the Lot Owners and Residents. The use of the Common Areas and Association Land shall be restricted to Members and Residents, and guests who are accompanied by a Member or Resident. No one shall have any right to fence any portion of the Common Area.
2. **RELEASE. THE LOT OWNER OF ANY LOT, FOR HIMSELF, ANY OCCUPANT OF THE SAME AND THEIR RESPECTIVE INVITEES, HEIRS, EXECUTORS, PERSONAL REPRESENTATIVES, ADMINISTRATORS, SUCCESSORS AND ASSIGNS(COLLECTIVELY, THE "RELEASING PARTIES"), DO HEREBY WAIVE ALL CLAIMS AGAINST AND RELEASE DEVELOPER, THE ASSOCIATION AND THE COMMITTEE, THEIR RESPECTIVE OFFICERS, DIRECTORS, PARTNERS, SHAREHOLDERS, SUCCESSORS AND ASSIGNS, FROM AND AGAINST ANY AND ALL LIABILITY OF ANY NATURE ARISING, OUT OF OR ON ACCOUNT OF ANY LOSS OR DAMAGE TO PROPERTY, INJURY OR DEATH AS A RESULT OF ANY USE OF ENTRY INTO ANY COMMON AREAS.**
3. **Covenants Running with the Land.** The terms and provision of these Protective Covenants shall be binding upon each Lot Owner and their respective heirs, executors, administrators, personal representatives, successors and assigns of each Lot Owner and shall enure to the benefit of Developer, the Committee, the Association and all of the Lot Owners of any of the Lots within the Subject Property. These Protective Covenants shall be deemed covenants running with the land and any lot shall be held, owned, sold, transferred, conveyed, hypothecated, encumbered, leased, occupied, built upon and otherwise used, improved and maintained subject to all of the terms and provisions of these Protective Covenants.
4. **Duration and Amendment.** It is understood and agreed that the foregoing covenants and restrictions shall attach to and run with the land for a period of fifty (50) years from the date hereof, at which time these covenants and

restrictions shall be automatically extended for successive periods of ten (10) years, unless, by a vote of a least fifty-one percent (51%) of all votes in the Association, it is agreed to change the same in whole or part. These covenants and restrictions may be amended or altered (a) solely by Developer during such periods of time as the Developer owns any Lots within the Subject Property, so long as such amendment does not materially and adversely affect or alter any Lot Owner's right to use his Lot or (b) by the (i) vote of fifty-one percent (51%) of all votes in the Association, along with (i) the written agreement of the Developer.

5. **Captions.** All personal pronouns used herein, whether used in masculine, feminine, or neuter gender, shall include all genders. The use of the singular tense shall include the plural and vice versa.
6. **Partition.** Each Lot Owner hereby waives any right to seek or obtain judicial partition of any portion or the Subject Property.
7. **Transfer.** Notwithstanding any thing provided herein to the contrary, no sale, transfer, conveyance, lease, pledge, encumbrance or other hypothecation of any Lot by Developer to any third party shall constitute or be deemed a transfer of any of the rights reserved herein to Developer unless express reference is made in such instrument of conveyance to the specific rights created in these Protective Covenants which Developer is transferring to such third party.
8. **Effect of Violation on Mortgage Lien.** No violation of any of these shall defeat or render invalid the lien of any mortgage made in good faith and for value upon any portion of the Subject Property; provided, however, that any mortgagee in actual possession or any purchaser at any mortgagee's or foreclosure sale shall be bound by and subject to these Restrictions as fully as any other Owner of any portion of the Subject Property.

INWITNESS THEREOF, the said Developer and lot Owners have executed this instrument on



The 11th Day of August, 2005

OWNER and DEVELOPER
STAN PARKER DEVELOPMENT, LLC

Stan Parker

By:
It's: President

STATE OF ALABAMA
SHELBY COUNTY

I, the undersigned, Notary Public in and for said County in said State certify that Stan Parker, whose name as Stan Parker Development, LLC 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, executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 11 day of Aug, 2005

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: July 23, 2007
BONDED THRU NOTARY PUBLIC UNDERWRITERS

Patricia K. Repnaday

OWNER and BUILDER
OLD SOUTH BUILDERS, INC.

Tommy Mayson

Tommy Mayson, It's President

STATE OF ALABAMA
SHELBY COUNTY

I, the undersigned, Notary Public in and for said County in said State hereby certify that Tommy Mayson, whose name as Old South Builders, Inc. is signed to the foregoing instrument and who is known to me, acknowledged before me on the day, that being informed of the contents of said instrument, he as such officer, executed the same voluntarily on the day the same bears date.

Given under my hand and official seal the 11 day of Aug, 2005

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: July 23, 2007
BONDED THRU NOTARY PUBLIC UNDERWRITERS

Patricia K. Repnaday



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Shelby Cnty Judge of Probate, AL
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