


BIRCH CREEK


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Shelby Cnty Judge of Probate, AL
10/24/2006 10:52:46AM FILED/CERT

Phase II

GENERAL COVENANTS, RESTRICTIONS, AND EASEMENTS

Birch Creek, Phase II
Recorded as Instrument Number _____
in the Probate Office of Shelby County, Alabama

KNOW ALL MEN BY THESE PRESENTS, THAT:

WHEREAS, B. Hulsey Company, LLC, an Alabama limited liability company, is the Owner and Developer, (hereinafter referred to as the "Developer"), of all lots in the Survey of Birch Creek, Phase II, a plat of which is recorded in Map Book 35, Page(s) 88, in the Probate Office of Shelby County, Alabama, said plat being made a part hereof by reference thereto, and

WHEREAS, the Developer is desirous of establishing certain general covenants, restrictions, and easements applicable to all lots owned by it in the said survey of Birch Creek, Phase II.

NOW THEREFORE, the Developer does hereby adopt, proclaim and publish general covenants, restrictions, and easements which shall be applicable to all lots in the said Survey of Birch Creek, Phase II, and which shall be binding on all parties and all persons claiming under them, and for the benefit of and limitations on all future owners in said Phase II, of Birch Creek, and Developer hereby declares that all of the said lots in Birch Creek, Phase II, shall be owned, sold, transferred, conveyed and occupied subject to all of the General Covenants, Restrictions, and Easements herein set forth, said General Covenants, Restrictions, and Easements being designed for the purpose of keeping the subdivision desirable, uniform, and suitable in architectural design and use, and which are set forth as follows:

1. RESIDENTIAL USE. The said property shall be used for single family residence purposes only and not for any purpose of business or trade.

2. FLOOR AREAS. No single family residence shall be constructed containing less than 1,800 square feet of heated and air conditioned interior floor space, exclusive of porches, garages and carports. For a 1-1/2 story dwelling, the main level must contain a minimum of 1,200 square feet and the remaining 600 square feet in the half-story. For a 2-story dwelling, a minimum of 1,000 square feet each on the 1st and 2nd levels.

3. SETBACKS. All single family residences or other authorized structures shall comply with the following setback requirements. No residence or structure shall be constructed closer than:

(a) Minimum front line setbacks as shown on the recorded map;

- (b) Side-line setback on each side to be 10 feet from the property line.
- (c) 25 feet to any rear lot line; and
- (d) Request for variance for items a, b, or c, will be presented to the Developer only if aforesaid requirements cannot be met because of the topography of a particular lot.

4. TEMPORARY STRUCTURES. Except for the construction and development activities of Developer 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.

5. 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. Developer 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.

6. DRAINAGE. The lot owner acknowledges that development of Birch Creek, Phase II shall take place in complete compliance with the restrictions set forth in the NPDES General Permit issued to B. Hulsey Company, LLC for Birch Creek Subdivision. No site preparation or construction activities are to take place until a plan for storm water control and pollution prevention plans have been approved by B. Hulsey Company, LLC or its successors and/or assigns. In the event pollution prevention and storm water control measures are not implemented or are determined to be inadequate, the developer reserves the right to correct said defects and the lot owner shall be responsible to the developer for the costs of said correction.

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.

7. 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 Birch Creek 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.

8. 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. The height of shrubbery near intersections is not to exceed 30 inches.

9. FENCES, CLOTHES LINES, AND MAILBOXES. Fences and or walls (above the grade of the lot), or hedges may be installed from the rear wall line of a residence to the rear property line. Walls and fences on the property are to be approved in writing by the Developer 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 developer.

10. WINDOWS; YARDS. All windows shall be wood framed or encased. Metal windows of any kind **will not** be permitted. All front and side yards must be sodded, except in natural areas.

11. GARAGE OPENINGS.

12. ARCHITECTURAL APPROVAL REQUIRED. No structure shall be commenced, erected, placed, moved on to or permitted to remain on any lot, nor shall any existing structure upon any lot be altered in any way which materially changes the exterior appearance thereof, nor shall any new use be commenced on any lot, unless plans and specifications (including a description of any proposed new use) thereof shall have been submitted to and approved in writing by the Developer or by an Architectural Committee appointed by the Developer. Such plans and specifications shall be in such form and shall contain such information as may be required by the Developer or by the Architectural 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 Developer or the Architectural Committee, (3) a drainage plan, including a construction drainage plan for silt control, and (4) a plan for landscaping.

13. PETS. No animals, birds, or reptiles shall be kept or be possessed in Birch Creek 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.

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

15. UTILITY EASEMENTS. Developer, or any utility 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.

16. 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 in excess of **18 inches in diameter** are permitted on any lot without the approval of the Architectural Committee.

17. RESTRICTIONS ON ACCESS. No vehicular access shall be permitted from any lot to public roads outside the boundaries of the subdivision except by roads constructed by the Developer in the Birch Creek development.

18. ZONING AND SPECIFIC RESTRICTIONS. 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.

19. GRANTEE'S ACCEPTANCE. 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 Developer or a subsequent owner of such lot, shall accept such deed or other contract upon and subject to each and all of these general covenants, restrictions, and easements herein contained.

20. INDEMNITY FOR DAMAGES. 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 Developer against and hold Developer harmless from any damage caused by such lot owner, or the contractor, agent or employees of such lot owner, to the golf course, 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.

21. ENFORCEMENT. 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 owners of lots, Developer, 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.

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.

22. INTERPRETATION BY DEVELOPER. Developer 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 benefited or bound by the provisions hereof.

23. ASSIGNMENT BY DEVELOPER. In the event that Developer should sell the Birch Creek development to a third party, Developer 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 Developer hereunder.

24. RULES AND REGULATIONS. 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 Developer or its successors, assigns, or designees.

25. MAILBOXES. All mailboxes and posts must be of a design specified by the Developer.

26. EXCEPTION FOR DEVELOPER. Paragraphs 1 through 24 shall not apply to Developer during the course of development of the property.

27. RIGHTS OF DEVELOPER TO MODIFY COVENANTS, RESTRICTIONS, AND EASEMENTS. The undersigned Developer, its successors or assigns, reserves the right to modify, release, amend, void, transfer or delegate any and all of the rights, reservations, and restrictions herein set forth, or the right to modify, release, amend, void, or transfer any one or more of the said herein set forth general covenants, restrictions, and easements on lots in said subdivision, at his sole discretion.

28. PROPERTY OWNERS ASSOCIATION. A Property Owners Association will be formed at a time determined in the sole discretion of the Developer, to promote community integrity, maintain the entrance, rights-of-ways and Lift Station, and for other purposes determined by the Association. The Association shall have the right to assess charges against each parcel of land for said maintenance of the entrance and rights-of-ways and Lift Station, and for any other costs agreed to by two-thirds of the "property owners". Each owner, by acceptance of a deed for any property in

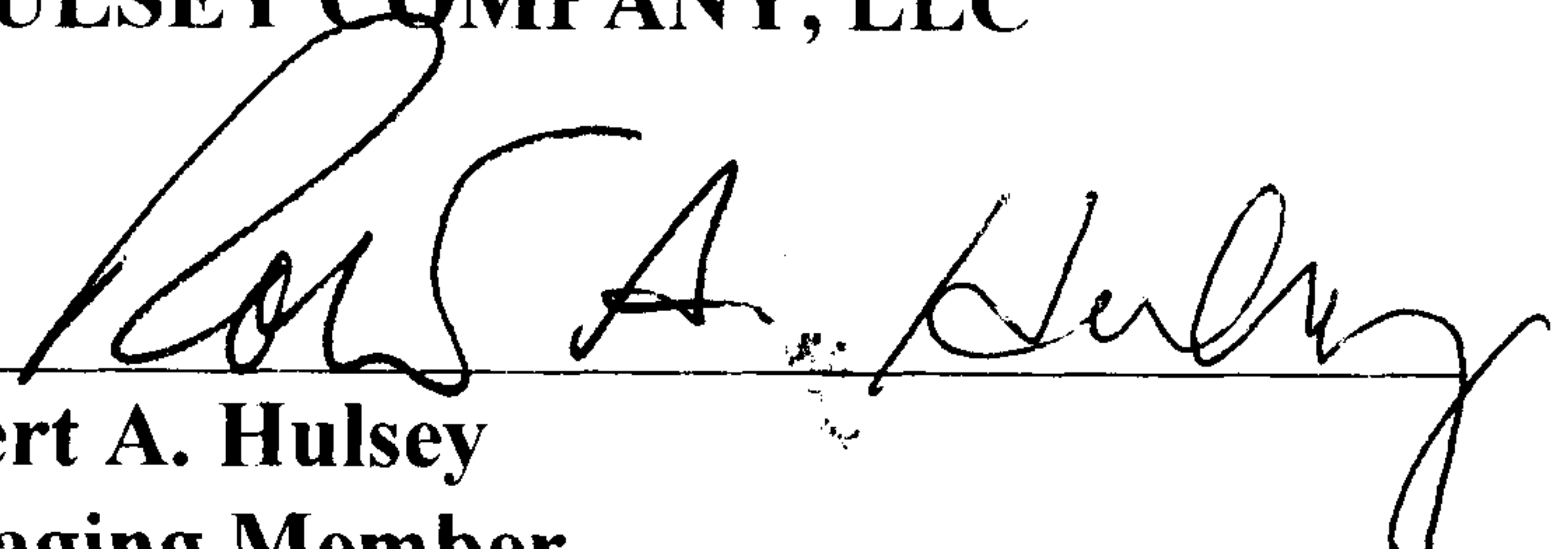
this Phase II of Birch Creek, shall become a member of the Association and is deemed to have covenanted and agreed to pay the Association charges as provided herein. These charges together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such charge is made.

29. TITLE. It is understood and agreed that said general covenants, restrictions, and easements, shall attach to and run with the land for a period of twenty (20) years from _____, 2006, and at which time the said general covenants, restrictions, and easements shall be automatically extended for successive periods of ten (10) years, unless by a vote of the then majority of the owners of the lots of Birch Creek, Phase II, it is agreed in writing to change said general covenants, restrictions, and easements in whole or in part.

Invalidation of any one of these general covenants, restrictions, and easements by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned, **Robert A. Hulsey, as Managing Member of B. Hulsey Company, LLC**, has hereunto set his hand and seal on this 27th day of September, 2006.

B. HULSEY COMPANY, LLC

By: 
Robert A. Hulsey
Managing Member

STATE OF ALABAMA)
COUNTY OF SHELBY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that **Robert A. Hulsey as Managing Member** of B. Hulsey Company, LLC, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me that, being informed of the contents of the instrument, he, as such officer, and with full authority, executed the same voluntarily for and as the act of said limited liability company, on the day the same bears date.

Given under my hand and official seal, this the 27th day of **September, 2006**


Notary Public
My Commission Expires: **09/21/10**