

STATE OF ALABAMA)
 :
COUNTY OF SHELBY)

**FIRST AMENDMENT TO THE
DECLARATION OF PROTECTIVE COVENANTS
FOR GLENEAGLES at BALLANTRAE**

THIS FIRST AMENDMENT TO THE DECLARATION OF PROTECTIVE COVENANTS FOR GLENEAGLES AT BALLANTRAE (this "Amendment") is made and entered into as of the 5th day of June, 2006 by **PINEHURST CONSTRUCTION & DEVELOPMENT, INC.**, an Alabama corporation ("Developer").

R E C I T A L S:

Developer has heretofore caused the Declaration of Protective Covenants for Gleneagles at Ballantrae dated August 10, 2004 (the "Declaration") to be recorded as Instrument #20040811000451970 in the Office of the Judge of Probate of Shelby County, Alabama. *Capitalized terms not otherwise expressly defined herein shall have the same meanings given to them in the Declaration.*

Developer is the owner of those certain lots (the "Subject Lots") which are subject to the terms and provisions of the Declaration and which are more particularly described in Exhibit A attached hereto and incorporated herein by reference.

Pursuant to the terms and provisions of Section 9.04 of the Declaration, Developer has the right, so long as it owns any Lots within the Property, to modify and amend the Declaration so long as such amendment does not materially adversely affect or alter any owner's right to use his Lot. Because Developer is the owner of all of the Subject Lots, Developer, as Developer under the Declaration, and as the Owner of all of the Subject Lots, desires to amend the Declaration as hereinafter provided.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Developer does hereby amend the Declaration as follows:

1. A new **Article X** shall be added as follows:

ARTICLE X
PRIVATE ROADWAYS

10.01 Definitions. In addition to the other defined terms set forth in these Protective Covenants, the following terms shall have the meanings set forth below:

(a) **“Private Common Areas”** means and refers to (i) all Private Roads within the Property, (ii) all signage, street lights, lighting, walkways, sidewalks, paths, bicycle and jogging paths and lanes, gates, limited access devices, walls, fences, improvements, landscaping and landscaping areas within or immediately adjacent to the Private Roads (other than such areas or improvements which are (1) located solely within the boundaries of any Lot or (2) owned or maintained by any federal, state, county or local governmental agency or department thereof, and (iii) all utility lines, pipes, wiring, ducts, conduits, equipment, machinery and other apparatus and appurtenances which provide utility services to any of the Private Common Areas which are not maintained by any utility service supplier or provider. The designation or classification of any land and/or improvements as part of the Private Common Areas shall not mean or imply that the public at large acquires any easement of use or enjoyment or any other rights, licenses or benefits therein or to the use thereof.

(b) **“Private Common Expenses”** means any and all costs incurred by the Association in maintaining, operating, repairing and replacing any of the Private Common Areas, including, without limitation, any of the following: (i) utility charges for any utility services provided to the Private Common Areas; (ii) the costs of any insurance policies purchased for the benefit of the Property as a result of the Property being served by Private Roads including, without limitation, commercial liability insurance coverage; (iii) ad valorem taxes levied or assessed against any of the Private Common Areas; and (iv) the establishment and maintenance of a reasonable reserve fund or funds (1) for inspections, maintenance, repair and replacement of any of the Private Common Areas, (2) to cover emergencies and repairs required as a result of casualties which are not funded by insurance proceeds and (3) to cover unforeseen operating contingencies or deficits.

(c) **“Private Road Assessments”** means assessments made by the Association pursuant to Section 10.05 below.

(d) **“Private Road Covenants”** means these Protective Covenants, which are hereby deemed to be “Private Road Covenants” pursuant to the terms and provisions of the Bylaws of the Association, as amended from time to time.

(e) **“Private Roads”** means any of the private roadways shown on any of the subdivision plats for any portion of the Property.

10.02 Grant of Non-Exclusive Easements to Private Common Areas. Subject to the terms and conditions of these Protective Covenants, Developer does hereby grant to the Owner of Lots 809, 810, 811, and 812 within the Property the non-exclusive right, privilege and easement of access to and the use and enjoyment of the Private Common Areas in common with Developer, the Association and their respective successors and assigns, and all other parties having any rights or interests therein. The easement and rights granted pursuant to this

Section 10.02 are and shall be permanent and perpetual, are non-exclusive, are appurtenant to and shall pass and run with title to each Lot and Dwelling within the Property .

Notwithstanding anything provided in these Protective Covenants to the contrary, the easement rights granted for ingress and egress (as shown on Record Map Book 33, Page 114) to the thirty-foot (30') easement lying adjacent to and in front of Lots 809, 810, 811, and 812 shall only extend to the Owners of said Lots 809, 810, 811, and 812 and their respective family members, agents, employees, guests and invitees. In no event, however, shall the general public be entitled to exercise or enjoy any of the Private Common Areas including, specifically, the Private Roads.

10.03 Grant of Easement to Governmental Authorities and Utility Companies.

Subject to the other terms and provisions of these Protective Covenants, Developer does hereby grant to (a) each branch, bureau, department and agency of all federal, state, county and municipal authorities and their respective agents, employees and representatives (the "Governmental Authorities"), and (b) all public and private companies or Governmental Authorities who provide any utility services to any of the Property and their respective agents, employees and representatives (the "Utility Companies"), a permanent, perpetual and non-exclusive easement over, across, through and upon the Private Roads for the purpose of performing their respective duties related to law enforcement, fire protection, trash and refuse collection, building inspection services, mail and package delivery, medical and emergency services, providing any utility services to the Property and all Residential Lots and other improvements situated thereon and performing any other functions or duties to be performed by any of the Governmental Authorities or Utility Companies as shall be required from time to time.

10.04 Reservation of Easements With Respect To Private Common Areas.

Developer does hereby establish and reserve for itself, its agents, employees, representatives, invitees, successors and assigns and does hereby grant to the Association, its agents, employees and representatives, a permanent and perpetual non-exclusive easement appurtenant over, across, through and upon all of the Private Common Areas (including the Private Roads) for the purpose of (i) installing, maintaining, repairing and replacing any improvements thereon, including, without limitation, any of the improvements described in Section 10.02 above, and (ii) doing all other things reasonably necessary and proper in connection therewith; provided, however, that neither Developer nor the Association shall have any obligation to undertake any of the foregoing. Developer does further establish and reserve for itself and its successors and assigns a permanent and perpetual non-exclusive easement to have access, ingress to and egress from and the right and privilege to use and enjoy all of the Private Common Areas for such purposes as Developer deems appropriate.

10.05 Private Road Assessments.

(a) As provided in Article V of these Protective Covenants, each Owner is obligated to pay, as individual assessments, the Private Road Assessments levied pursuant to the terms and provisions of this Article X.

(b) The Association shall determine each year the Private Common Expenses which are applicable to the Property and the Private Common Areas located within the Property.

The amount determined by the Association as the Private Common Expenses each year for the Private Common Areas within the Property shall be divided by the total number of Lots within the Property and each Lot shall then be obligated to pay to the Association, within thirty (30) days following the billing of the Private Road Assessments, each Owner's respective prorata share of the Private Road Assessments for the then applicable calendar year, which Private Road Assessments shall be deemed individual assessments under these Protective Covenants.

(c) Private Road Assessments shall be assessed to Lots 809, 810, 811, and 812 at a uniform rate. To the extent any Owner of Lots 809, 810, 811, and 812 fails to timely pay the Private Road Assessments levied against such Owner's Lot, then the Association shall have the right to exercise all rights and remedies set forth in Article V of these Protective Covenants.

(d) To the extent the Association has collected sufficient amounts from the Owners of the Lots within the Property to pay the Private Common Expenses for the then applicable year, the Association shall maintain all of the Private Common Areas located within the Property in good condition and repair including, repaving, patching and resurfacing the Private Roads with the Property in accordance with sound management practices.

10.06 Miscellaneous Provisions.

(a) These Protective Covenants shall constitute "Private Road Covenants", as defined in the Bylaws of the Association.

(b) Notwithstanding anything provided in these Protective Covenants to the contrary, (i) the placement or maintenance of a gate or any other improvements which limit or restrict access to the Property and the Lots that constitute part of the Property is not intended to obligate either Developer or the Association to provide any form of security within the Property and (ii) each Owner, for himself or herself and all family members, agents, employees, representatives and invitees of such Owner and each of their respective heirs, executors, personal representatives, administrators, successors and assigns, does hereby irrevocably and unconditionally waive, release and forever discharge Developer and the Association and their respective officers, directors, members, shareholders, employees, agents, representatives, successors and assigns, of and from any and all actions, causes of action, claims, demands, agreements, covenants, suits, obligations, controversies, accounts, damages, costs, expenses, losses and liabilities of every kind or nature, known or unknown, arising out of or account of any loss, damage or injury to person or property, including death, as a result of any entry, whether lawful or unlawful, on to the Property or any of the Lots or homes situated thereon by any third party or arising out of the acts or omissions of any third party. The creation of Private Roads within the Property is not intended to be a security-related matter; rather, the Private Roads within the Property are intended only to provide limited access so that the general public, at-large, does not have direct access to the Property. In no event, however, is any security promised and no representations or warranties, either express or implied, are made by either Developer or the Association concerning security within or for any of the Lots or homes situated within the Property.

2. **Full Force and Effect.** Except as expressly modified and amended herein, all of the terms and provisions of the Declaration shall remain in full force and effect.

IN WITNESS WHEREOF, Developer has caused this Amendment to be executed as of the day and year first above written.

PINEHURST CONSTRUCTION &
DEVELOPMENT, INC.

By: Robert C. Sinclair
Robert C. Sinclair, President


STATE OF ALABAMA)
COUNTY OF SHELBY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Robert C. Sinclair, whose name as President of Pinehurst Construction & Development, Inc., is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority to do so, executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 5th day of June, 2006.

Linda J. Roberts
NOTARY PUBLIC
My Commission Expires: 3-29-09

EXHIBIT A


20061129000577710 6/6 \$29.00
Shelby Cnty Judge of Probate, AL
11/29/2006 10:04:44AM FILED/CERT

Legal Description of Subject Lots

Lots **809, 810, 811 and 812**, according to the Subdivision Plat for Gleneagles at Ballantrae, as recorded in Map Book 33, Page 114, in the Office of the Judge of Probate of Shelby County, Alabama.