


STATE OF ALABAMA)
SHELBY COUNTY)


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Shelby Cnty Judge of Probate, AL
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CALERA COMMONS TOWNHOMES

DECLARATION OF PROTECTIVE COVENANTS, RESTRICTIONS, EASEMENTS, RIGHTS AND LIENS

This Declaration of Protective Covenants, Restrictions, Easements, Rights and Liens is made on this 14 day of SEPT, 2007, by **CALERA LAND HOLDINGS, LLC**, the owner of the property described below (hereinafter referred to as the "owner") which property is to be developed as a residential subdivision known as **CALERA COMMONS TOWNHOMES**.

WITNESSETH

WHEREAS, Calera Land Holdings, LLC, is the fee simple owner of certain real property located in Shelby County, Alabama, which is more particularly described as follows (hereinafter referred to as "Real Estate"):

CALERA COMMONS TOWNHOMES as recorded in Map Book 38, Page 62 in the Probate Office of Shelby County, Alabama.

WHEREAS, the owner intends to develop the Real Estate and the Common Area (The Real Estate and Common Area hereinafter sometimes collectively referred to as the "Property") pursuant to a general subdivision plan covering all of the property and subject to certain protective covenants, restrictions, easements, rights, equitable servitudes, liens, and charges, all running with the land.

WHEREAS, the plan for the Property provides for the Real Estate to be subdivided into lots on which single-family townhouse units will be constructed (hereinafter such lots being referred to as "Lots").

NOW, THEREFORE, in order to enhance and protect the value, attractiveness and desirability of the Property, and in furtherance of a general plan for the development, protection, maintenance, improvement, and sale of the Property, the Owner hereby declares that all of the Property shall be subject to the following covenants, restrictions, easements, rights, equitable servitudes, liens, and charges:

1. **LAND USE.** The Real Estate shall be used exclusively for residential purposes. No building shall be constructed, placed or permitted to remain on any Lot other than one single-family dwelling not more than two and one-half stories in height. No part of the Property shall be used or caused to be used in any way, directly or indirectly, for any business, commercial, manufacturing, warehousing, or any other such nonresidential purposes, except, that the Owner may use the Property as a model home site, and may operate display and sales offices on the Property for the purpose of selling Lots for as long as the Owner continues to any portion of the Property.

2. **PARKING.** No automobile, truck, house trailer, camper, boat, dune buggy or any other type vehicle shall be parked or maintained on any permanent basis on the right-of-way or in front of any Lot. Only vehicles used for day-to-day transportation of the Property owners, their families or invitees may be kept or stored on the Property. No house trailer, dune buggies, or inoperable vehicles may be kept or stored on the premises. Campers and boats may be stored on the premises but must not be seen from the street. Nothing contained in this paragraph shall preclude guests or invitees of any Lot owner from parking in the front of any Lot so long as such guest or invitee parks in the designated parking area and parks only on a temporary basis. Ownership of each lot shall entitle the owner or owners thereof to the use of not more than two automobile parking spaces, which shall be near and convenient to said Lot as reasonably possible, together with the right of ingress and egress in and upon said parking area.

3. **DWELLING SIZE.** Every dwelling must contain not fewer than 1000 square feet of heated space.

4. **SET-BACK REQUIREMENTS.** Dwelling shall be constructed and placed on a Lot in conformance with the minimum building set-back requirements set forth in applicable municipal or county ordinances from time to time in effect or as may be indicated on the recorded plat covering the Property.

5. **NUISANCES.** No noxious or offensive activity, or any activity which is, or may become, and unreasonable nuisance or annoyance to any Lot owner, shall be conducted or permitted in or around any portion of the Property. No loud noises or noxious odors shall be emitted or permitted on the Property.

6. **TEMPORARY STRUCTURES.** No out-building, tent, shack, or shed of any kind shall be placed upon any portion of the property, either temporarily, other than temporary structures of offices erected by the Owner in connection with the construction and sale of the townhouse units on the Lots. No garage, trailer, camper, motor home, or recreation vehicle shall be used as a residence on the Property, either temporarily or permanently. All fire wood storage must be behind residence.

7. **SIGNS AND ANTENNAS.** No sign, poster, display, billboard or other advertising device of any kind shall be erected or displayed to the public view on any portion of the Property, except one sign of not more than 6 square feet advertising a Lot for sale or rent may be placed on the Lot, and signs, regardless of size, used by the Owner to advertise the Property during the period in which the Owner is constructing and/ or selling townhouse units on the Property, may be placed on the Property. No television or other antenna shall be placed or erected on the exterior of any residence. There shall be no satellite dishes allowed that are visible from the road.

8. **OIL AND MINING OPERATIONS.** No exploration, drilling, development or refining of or for hydrocarbons, or quarrying or mining operation of any kind, shall be conducted or permitted upon or under any portion of the Property, and no

wells, tanks, tunnels, surface mines or underground mines shall be permitted thereon or therein. No derrick or other structure designed for use in boring or drilling for water, oil or natural gas shall be erected, maintained or permitted upon the Property.

9. **ANIMALS.** No animals, livestock, or poultry of any kind shall be raised, bred, or kept upon the Property, except the usual and ordinary household pets (e.g. dogs, cats, fish, and birds) may be kept on the Property, provided that the animals are not kept, bred, or maintained for commercial purposes or in unreasonable numbers.

10. **GARBAGE AND REFUSE DISPOSAL.** No portion of the Property shall be used or maintained as a dumping ground for wastes, rubbish, or garbage. All such refuse stored or kept on the Property must be placed in sanitary containers, and no noxious or foul odor shall be permitted to emanate therefrom.

11. **TOWNHOUSE EASEMENTS.** The Owner intends to construct a townhouse on each Lot, and the construction of such townhouses may require that certain eaves, roof overhangs, brick veneers, siding and other architectural features and building materials encroach upon or hang over contiguous Lots. Accordingly, there is hereby created, granted and reserve, as an appurtenance to each Lot, a perpetual easement over and across each Lot, contiguous thereto for all such encroachments and overhangs, as well as for all encroachments and overhangs resulting from any natural movement or any such townhouse. In addition, there is hereby created, granted and reserved to the owner or owners of each Lot, a license and right of entry across contiguous Lots as may be needed to maintain and repair such encroaching or overhanging structures. If any townhouse shall be damaged or destroyed, the owner or owners thereof shall be permitted to repair and reconstruct such townhouse with encroachments and overhangs, not more intrusive than those existing at the time of such damage or destruction and thereafter said license and right of entry shall continue in effect. There is reserved an easement for drainage as may be required resulting from the topography or lay of the land. Easements for installation and maintenance of utilities and drainage facilities are reserved and created as shown on the recorded map.

12. **COVENANTS TO RUN WITH THE LAND.** The covenants, restrictions, easements, rights, equitable servitude's, liens and charges set forth herein shall (a) run with the land (the property); (b) be binding upon any and every person or entity having any rights, title, or interest in the Property, or any part thereof, and such person's or entity's heirs, executors, administrators, successors and assigns; (c) inure to the benefit of every portion of the Property and every interest therein; (d) inure to the benefit of, and be binding upon, the Owner, it successors in interest, and grantee from the owner of any interest in the Property and such grantee's successors in interest; and (e) be binding and in effect for a period of twenty years from the date that this instrument is recorded in the Probate Office of Shelby County, Alabama.

13. **APPLICATION TO OWNER.** Notwithstanding any provisions herein to the contrary, nothing contained in this instrument shall prevent, hinder or limit the Owner in any manner whatsoever in connection with the development of the Property and the

construction and sale of townhouse units on the Property, and any provision have such effect shall be null, void and unenforceable against the Owner.

14. CONSENT OF LOT OWNERS. Whenever the consent of the Owners of the Lots is required with respect to any action described herein, the consent of the Owner or Owners of any Lot shall be deemed given if the record owner of such Lot (or a majority of such record owners, if more than one) shall evidence such consent in writing.

15. PROHIBITION AGAINST CHANGING EXTERIOR OR LANDSCAPING. Each Lot owner shall, from time to time, paint (provided the same paint color is used) and otherwise maintain the exterior of the dwelling as needed. Such maintenance and painting shall be done in a manner harmonious with the remaining dwelling units and shall not be completed in such a manner, color, or design so as to disrupt the harmonious blending of the original architectural plans of the dwelling units. Each Lot owner shall be prohibited from making any changes at all to the front exterior of their respective residence.

16. The undersigned owner reserves the right to modify, release, amend, void, transfer or delegate all the right, 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 restrictions on Lots in said subdivision.

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

18. ENFORCEMENT. If any Lot owner, or their heirs or assigns shall violate, or attempt to violate, any of the covenants herein, it shall be lawful for any other person, or persons, owning real Property situated in said development, or subdivision to prosecute and proceedings at law in equity against person, or persons, violating or attempting to violate any such covenant, and either to prevent him, or them, from so doing, or to recover damages or other dues from this violation.

20. COVENANT WITH RESPECT TO MAINTENANCE OF LOTS AND IMPROVEMENTS. Each owner shall keep His or Her Lot and the structure thereon in good order and repair including, but not limited to, the seeding, watering, and mowing of all lawns, the pruning and cutting of all trees and shrubbery, and the painting (or other appropriate external care) of the structure all in a manner and with such frequency as is consistent with good Property management. No owner of any Lot shall modify the structure in His or Her Lot by adding a room or rooms, changing the roof lines, adding decks, materially changing or altering the color or making other alterations in the exterior appearance of the structure without express written approval of the Planning Commission to the City of Calera, Alabama. Each owner, in acquiring title to His or Her respective Lot, acknowledges that the décor, color scheme, and design have been selected in such a manner to be consistent and harmonious with other houses within the subdivision and agrees to maintain His or Her respective Lot and structure in such a manner as to

maintain and perpetuate the visual harmony within the subdivision.

21. DAMAGE OR DESTRUCTION. In the event of damage or destruction to any structure within the subdivision, the respective owner thereof agrees as follows:

(I). In the event of total destruction, the owner shall within sixty (60) days clear the Lot of debris and commence to rebuild and reconstruct the structure in conformity with the colors, materials, plans, and specifications of the original structure so destroyed, subject to any changes or modifications of the original structure so destroyed, subject to any changes or modifications as may be approved by the Architectural Control Committee.

22. COMMON AREA shall mean and refer to all real and/or personal property, including property which the Association owns, leases, holds an easement, or otherwise maintains for the use or enjoyment of the members of the Association, including, without limitation, a right of use, such as but not limited to, easements for ingress and egress to and within the Property and easements for surface water collection and retention or detention. The Common Area shall include, in addition to the property and areas mentioned above any portions of any Lot or Lots or other areas referred to on the recorded map as Common Areas. The use of the Common Areas shall be restricted to landscape, entry features, drainage and retention or detention, medians, lighting, or any other use which the Board of Directors or other governing body of the Association may allow.

23. COVENANTS FOR MAINTENANCE ASSESSMENTS

23.01 Affirmative Covenant to Pay Assessments. Each Owner, by acceptance of a deed or other instrument of conveyance for a Lot, whether or not it shall be so expressed in any such deed or other instrument, including any purchaser at a judicial sale, shall be obligated and hereby covenants and agrees to pay to the Association, in the manner set forth herein, all assessments or other charges, determined in accordance with the provisions of this Declaration (the "Assessments").

23.02 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the preservation of the appearance, value and amenities of the Property, utilities for the street lights and irrigation for all landscaping and in particular for the improvement, preservation, maintenance and administration of the Common Areas (including, without limitation, the payment of Common Expenses under Paragraph 24 below) and of any easement in favor of the Association and/or the Owners, as well as for such other purposes as are properly undertaken by the Association.

23.03 Annual Assessments. The Association shall levy Annual Assessments in such amounts as are necessary to meet the Common Expenses (as defined in Paragraph 24 below) and such other recurring or projected expenses as the Board of Directors of the Association (the "Board") may deem appropriate. The Assessment year for the Annual Assessment need not be the calendar year.

23.04 Special Assessments. In addition to the Annual Assessments specified in Section 23.03 above, the Association may at any time levy one or more Special Assessments for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, or expected or unexpected repair to or replacement of any of

the Common Areas, including any fixtures and personal property related thereto.

23.05 Duties of the Board of Directors. The Board shall fix the amount of all Assessments, the date of commencement for each Assessment, and the due date of such Assessment, on a per Lot basis, at least thirty (30) days in advance of any such commencement date, and shall at that time, prepare a roster of the Lots and Assessments applicable thereto, which roster shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of the amount of the Assessment, the commencement and due dates shall be sent to every Owner subject thereto not later than seven (7) days after fixing the date of commencement.

23.06 Date of Commencement and Due Date for Assessments. The liability of a Lot for any Assessment shall commence on the date or dates (which shall be the first day of a month) fixed by the Board in the resolution authorizing such Assessment. The due date of any such Assessment (which may be different from the commencement date) shall also be fixed in the resolution authorizing such Assessment (but which need not be the first day of a month). Such Assessments shall be payable in advance in monthly, quarterly, semi-annual or annual installments, as so fixed in the resolution authorizing the Assessment.

23.07 Allocation of Assessment. The Board shall allocate a portion of each Assessment to each Lot in the proportion that each Lot bears to the total number of Lots within the Property (to the nearest one-thousandth).

23.08 Certificates Concerning Assessments. The Association shall, upon demand at any time, furnish to any Owner liable for any Assessment or his designee or any Institutional Mortgagee a certificate in writing signed by an Officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

23.09 Liability of Owners for Assessments. No Owner may exempt himself from liability for any Assessment levied against his Lot by waiver of the use or enjoyment of any of the Common Areas, or by abandonment of the Lot.

23.10 Effect of Non-Payment of Assessments: The Lien, the Personal Obligation; Remedies of the Association.

(a) If any Assessment or other charge or lien provided for herein is not paid in full on the due date set by the Board, then such Assessment, charge or lien shall become delinquent on the thirtieth day thereafter, and together with interest thereon and cost of collection thereof as are hereinafter provided, thereupon become a continuing lien on the Lot encumbered thereby, and also the personal obligation of its Owner, his heirs, and his or its successors and/or assigns. Notice of such delinquency shall be forwarded to such Owner and any Institutional Mortgagee having an interest in the Lot. The personal obligation of any Owner to pay such Assessment, however, shall remain his or its personal obligation and shall not pass to any successors or assigns unless expressly assumed by them.

(b) If any Assessment is not paid within thirty (30) days after the delinquency date, the Assessment shall bear interest from the date of delinquency at the highest rate permitted under Alabama law, and the Association may bring an action against the Owner personally obligated to pay the same and/or commence the foreclosure of the aforesaid lien against the Lot in like manner as a foreclosure of a mortgage on real property under the laws of the State of Alabama, and there shall be added to the amount

of such Assessment all attorneys' fees incurred in attempting to collect such Assessment and in prosecuting any action for the same, the cost of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include the interest on the Assessment as above provided together with the costs of the action. The lien granted to the Association shall further secure such advances for taxes and payments on account of superior mortgages, liens or encumbrances which may be required to be advanced by the Association in order to preserve and protect its lien. Any person (except an Institutional Mortgagee) who shall acquire, by whatever means, any interest in the ownership of any Lot, or who may be given or acquire a mortgage, lien or other encumbrance thereon, is hereby placed on notice of the lien granted to the Association and shall acquire his interest in any Lot expressly subject to any such lien of the Association.

(c) The lien herein granted to the Association shall be perfected by recording a Claim of Lien in the Probate Office of Shelby County, Alabama, stating the description of the Lot encumbered thereby, the name of its Owner, the amount due and the date when due. The lien shall continue in effect until all sums secured by it, as herein provided, shall have been fully paid. Such Claim of Lien shall include only Assessments which are due and payable when the Claim of Lien is recorded, plus interest, costs, attorneys' fees and advances to pay taxes, prior encumbrances and other proper charges together with interest thereon, all as provided herein. Such Claim of Lien shall be signed and verified by an officer or agent of the Association. Upon full payment of all sums secured by such Claim of Lien, the same shall be satisfied of record. No sale or other transfer of a Lot shall relieve any Owner from liability for any Assessment due before such sale or transfer, nor from the lien of any such Assessment. The written opinion of an officer of the Association that any lien is subordinate to any given mortgage shall be deemed to be dispositive of that issue.

(d) The lien of any Assessments shall be subordinate to the lien of any Institutional Mortgagee bearing a recording date in the Probate Office of Shelby County, Alabama prior to the date of recording the Association's Claim of Lien. Where an Institutional Mortgagee obtains title to a Lot as a result of foreclosure of its mortgage or where any Institutional Mortgagee or its designee accepts a deed to a Lot in lieu of foreclosure, such acquirer of title, its successors and assigns, shall not be liable for any Assessment pertaining to such Lot or chargeable to the former Owner which became due prior to the acquisition of title to such Lot, unless such delinquent Assessment was secured by a Claim of Lien recorded prior to the recordation of the Institutional Mortgagee's mortgage. Nothing herein contained shall be construed as releasing the party liable for such delinquent Assessments from the payment thereof or liability for the enforcement or collection thereof by means other than foreclosure.

(e) Any person who acquires an interest in a Lot, except an Institutional Mortgagee as specifically provided above, including, but not limited to, persons acquiring title by operation of law or at a judicial sale, shall not be entitled to occupancy of the Lot or the use or enjoyment of the Common Areas until such time as all unpaid Assessments due and owing by the former Owner have been paid in full. Any party who has a contract to purchase a Lot, or who has made application for a loan secured by a mortgage on said Lot, may, by written request, inquire of the Association whether the Lot is subject to any Assessments which are due and payable and the

Association shall give the requesting party a written response within ten (10) days of such inquiry providing information as to the status of Assessments on said Lot. The party making such request may rely on the information set forth in such response and the facts stated therein shall be binding upon the Association.

(f) The Association shall have the right to assign its Claim of Lien, and any other lien rights provided for in this Article V, for the recovery of any unpaid Assessments, to the Developer, to any Owner or group of Owners, or to any third party.

23.11 Exempt Property. The Board shall have the right to exempt any portion of the Property from the Assessments, charges and liens created herein provided that such part of the Property exempted is used (and as long as it is used) for any of the following purposes:

- (a) As an easement or other interest therein dedicated and accepted by the local public authority and devoted to public use;
- (b) As a Common Area as defined herein.

24. COMMON EXPENSES

The following are certain expenses with respect to the Common Areas which are hereby declared to be Common Expenses which the Association is obligated to collect by Assessment and which Owners are obligated to pay as provided in Article V hereof. The enumeration below of these expenses shall in no way limit the Association from considering other expenses incurred in managing the Association or any part of the Common Areas and/or the Property as expenses subject to collection by Assessment.

24.01 Maintenance and Repair of Common Areas. The cost and expense to keep and maintain the Common Areas, Ponds and Drainage Ways in good and substantial repair and in a clean and attractive condition, if any, including the charges in Section 7.01 of this Declaration.

24.02 Management. The cost and expense of such (i) employees or agents, including professional management agents, accountants and attorneys, and (ii) materials, supplies and equipment as may be needed to provide for the management, supervision and maintenance of the Common Areas, including any actual cost borne by the Developer in the management of the same.

24.03 Property Taxes. All ad valorem taxes and other assessments relating and connected to the Common Areas, if any.

24.04 Reserves. The Association shall establish contingency reserves for repairs to Common Area structures such as lighting or sidewalks. The Association may establish reserves for the payment of Common Expenses in the future.

24.05 Fidelity and Directors' Insurance. Fidelity and Directors' Insurance covering all directors, officers and employees of the Association and all managing agents who handle Association funds, if any.

24.06 Interested Transactions. The Association may obtain materials and services from the Developer or any of its Affiliates in connection with the management of the Association or any part of the Common Areas as herein contemplated; provided that the compensation for such materials and/or services is, in the opinion of the Association, comparable with the compensation of any non-affiliated third party providing similar materials and/or services which can be reasonably made available to the Association.

24.07 **Enforcement of Declaration and Rules and Regulations.** All fees, costs and expenses, including attorneys' fees through all appellate levels, in connection with the Association's duty to enforce all of the Protective Covenants and other terms contained in or imposed by this Declaration, and all rules and regulations adopted pursuant to the Articles, by the By-Laws or this Declaration.

This the 31 day of August, 2007.

CALERA LAND HOLDINGS, LLC

By: Glenn Siddle

Its: Member

STATE OF ALABAMA)
COUNTY OF SHELBY)

I, the undersigned, a Notary Public in and for said county, in said State, hereby certify that Glenn Siddle, Member of Calera Land Holdings, LLC, an Alabama limited liability company, is signed to the foregoing instrument who is known to me, acknowledged before me on this day, that, being informed of the contents of the Instrument, He, in his capacity as Officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and seal this 31 day of August 2007

[Signature]
Notary Public

My commission expires 9/15/2011