


When recorded, return to:  
William C. Byrd, II  
Bradley Arant Boult Cummings LLP  
1819 Fifth Avenue North  
Birmingham, Alabama 35203

  
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Shelby Cnty Judge of Probate, AL  
10/17/2013 10:56:42 AM FILED/CERT

### DECLARATION OF ACCESS AND PARKING EASEMENT

This DECLARATION OF ACCESS AND PARKING EASEMENT ("Declaration") is executed as of the 15<sup>th</sup> day of October, 2013, by **TIMBERLINE GOLF CLUB, LLC**, an Alabama banking corporation ("Timberline").

#### RECITALS :

- A. Timberline is the owner of that certain tract of land (the "Club Tract") adjacent to and abutting the Parking Lot Tract (hereinafter defined), being more particularly described on Exhibit A attached hereto and incorporated herein by reference.
- B. Timberline is also the owner of that certain tract of land (the "Parking Lot Tract") adjacent to and abutting the Club Tract, being more particularly described on Exhibit B attached hereto and incorporated herein by reference (the Club Tract and the Parking Lot Tract are collectively herein, the "Tracts").
- C. Timberline is to provide to Club Tract an easement across a portion of the Parking Lot Tract for vehicular ingress and egress from the Club Tract to Timberline Trail.
- D. Timberline desires to provide to Club Tract easement for the parking of motor vehicles on the Parking Lot Tract.

NOW, THEREFORE, in consideration of Five Hundred Dollars (\$500.00) and other mutual promises herein and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged and confessed, Timberline declares as follows:

1. Access Easement. Timberline hereby declares, grants, bargains, and sells to the Club Tract, its successors and assigns, for the use by its owners, its employees, invitees, guests and agents, a perpetual, non-exclusive easement (the "Access Easement") for vehicular ingress and egress from the Club Tract to Timberline Trail over and across the Parking Lot Tract.
2. Parking Easement. Timberline hereby declares, grants, bargains, and sells to the Club Tract, its successors and assigns, for the use by Owner of the Club Tract employees, invitees, guests and agents, a perpetual, non-exclusive easement (the "Parking Easement") for (a) parking of motor vehicles within the Parking Lot Tract and (b) pedestrian and motor vehicle ingress and egress to and from the Parking Lot Tract, over and across the driveways and walkways from time to time constructed on the Club Tract to the Parking Lot Tract referred to individually or collectively herein as "Easements."



3. Purposes. The Access Easement and the Parking Easement (collectively, the "Easements") shall not be used for any other purposes other than those specified in Section 1 and Section 2 herein without the prior written consent of the owner of the estate burdened by such Easement (the "Owner"). Use of Easements shall be subject to such reasonable rules and regulations as may be adopted by its respective Owner from time to time.
4. Nonexclusive Rights, Rights Reserved. The Easements and other rights and benefits herein created are not exclusive, and each party hereto expressly reserves the right for itself and its successors and assigns, without the prior written consent of the other party, to grant such other easements, rights, benefits rights of way and privileges to such persons and for such purposes as such party, in its sole and absolute discretion, may elect, so long as such purposes do not unreasonably interfere with the Easements and other rights and benefits granted herein.
5. Relocation, Alteration or Restriping of Easements. The Owner of the Parking Lot Tract shall have the right to restripe the parking spaces on its Tract if: (a) a taking of all or part of an Easement by condemnation or other eminent domain proceedings requires a relocation of such parking lot or access to the public street or any portion thereof or (b) an Owner determines for any reason, in its reasonable discretion, that the Easements on its Tract should be relocated; provided, however, that any such relocation shall not unreasonably interfere with the enjoyment of the use, rights and privileges granted hereunder.
6. Maintenance. Each Owner shall, at such Owner's sole cost and expense, operate, maintain and repair the Easement located on its Tract in good condition, order and repair; provided, however, the owner of the Club Tract shall reimburse the owner of the Parking Lot Tract for seventy-five percent (75%) of the reasonable costs incurred by the owner of the Parking Lot Tract in the maintenance of the Easements, in consideration of the extra maintenance costs incurred due to the use of such Easements by the owner of the Club Tract, its employees invitees, guests and agents. Upon the completion of any maintenance to the Easements, the owner of the Parking Lot Tract shall present to the owner of the Club Tract a statement, along with written receipts evidencing the amounts shown thereon, setting forth the actual costs incurred in performing and completing said maintenance.
7. Default by Owner. If an Owner defaults in its obligations hereunder ("Defaulting Party"), the other party ("Non-Defaulting Party") may give notice of such default hereunder to the Defaulting Party, and such Defaulting Party shall thereupon have fifteen (15) days to commence correction of such default and diligently and continuously pursue such correction until completion. If the Defaulting Party has not cured such default within such fifteen (15) day period or if the Defaulting Party has not diligently and continuously pursued the correction of such default, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right, but not the obligation, to enter upon or employ others to enter upon the Easements and to undertake correction of such default, and the Non-Defaulting Party shall be promptly reimbursed for all sums reasonably expended in connection therewith, together with interest thereon at the rate



equal to the lesser of either (a) the maximum rate allowed by applicable law, or (b) twelve percent (12%) per annum from the date of demand by the Non-Defaulting Party for reimbursement until paid, together with all costs of collection thereof, including reasonable attorneys' fees and disbursements, or the Non-Defaulting Party may pursue all available legal or equitable remedies due to such default.

8. Indemnification. **EACH PARTY HERETO COVENANTS TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE OTHER PARTY FROM AND AGAINST ALL CLAIMS, LIABILITY, DAMAGES, EXPENSES, CAUSES OF ACTION, SUITS, CLAIMS OR JUDGMENTS ARISING FROM OR AS A RESULT OF ANY ACCIDENT, INJURY, LOSS OR DAMAGE WHATSOEVER CAUSED TO A NATURAL PERSON OR TO THE PROPERTY OF ANY PERSON, ALLEGED TO HAVE OCCURRED ON THE INDEMNIFYING PARTY'S RESPECTIVE TRACT OR EASEMENT AREA, EXCEPT TO THE EXTENT THAT ANY SUCH LIABILITY, CLAIM OR DAMAGE IS CAUSED BY THE DIRECT ACT OR GROSS NEGLIGENCE OF THE OTHER PARTY HERETO.** In addition, no Owner performing construction, repair or maintenance work in the Easements granted for its benefit shall be liable to the other Owner or any of its employees, invitees, guests and agents or to any other persons for any injury to persons or damage to property on such Easements, unless caused by the gross negligence or willful action of such Owner or its contractors, subcontractors, agents or employees, performing such construction, repair or maintenance. **EACH OWNER PERFORMING SUCH CONSTRUCTION, REPAIR OR MAINTENANCE HEREBY AGREES TO INDEMNIFY AND HOLD HARMLESS THE OTHER OWNER FROM ALL LOSS, EXPENSE (INCLUDING ATTORNEYS' FEES AND DISBURSEMENTS), DAMAGES AND CLAIMS ARISING OUT OF SUCH CONSTRUCTION, REPAIR OR MAINTENANCE, OTHER THAN THOSE CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL ACTION OF THE INDEMNIFIED OWNER.**
9. Ad Valorem Taxes. All ad valorem real estate taxes and assessments assessed against Easements shall be the sole responsibility of the Owner of the Tract on which the Easements is located.
10. Applicable Law. This Declaration shall be governed by and construed in accordance with the laws of the State of Alabama.
11. Severability. In case any one or more of the provisions contained in this Declaration shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not effect any other provision hereof, and this Declaration shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
12. Multiple Counterparts. To facilitate execution, this instrument may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature or acknowledgment of, or on behalf of, each party, or that the signature of all persons required to bind any party, or the acknowledgment of such party, appear on each



counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this instrument to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, and the respective acknowledgments of, each of the parties hereto. Any signature or acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures or acknowledgments thereof and thereafter attached to another counterpart identical thereto except having attached to it additional signature or acknowledgment pages.

13. Entire Declaration. This Declaration contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any or all representations or modifications concerning this instrument shall be of no force and effect except for a subsequent modification in writing signed by the parties hereto.
14. Binding Effect. The parties covenant and agree that (i) the servitudes, easements, rights, rights-of-way, privileges, agreements, covenants and restrictions and all other terms, conditions and provisions hereof shall be binding upon their respective successors and assigns and all other persons or entities having or hereafter acquiring any right, title or interest in the respective Tracts, and all other persons and entities claiming by, through or under said owners and their respective successors and assigns, and (ii) such servitudes, easements, rights, rights of way, privileges, agreements, covenants and restrictions and other terms herein shall be covenants running with the land.
15. Subordination. Any mortgage, deed of trust, ground lease, or other lease hereafter granted or entered into with respect to the Club Tract or the Parking Lot Tract shall be subject, subordinate, and inferior to the easements, rights, benefits, and obligations created hereby, and the foreclosure under any such mortgage or deed of trust shall not extinguish or impair the easements, rights, benefits, and obligations created by this Declaration.
16. Covenants Run With the Land. The rights, obligations and benefits established pursuant to this Declaration shall run with the land and shall be binding upon owner of the Club Tract and the Parking Lot Tract and their respective successors and assigns and all subsequent owners of any portion of such Tracts. Nothing contained herein is intended nor shall it be construed as creating any rights in or for the benefit of the general public. Notwithstanding the fact that the Tracts have common ownership, the easements shall not merge into the fee simple interest of the Owner.
17. Construction. Whenever the context hereof so requires, reference to the singular shall include the plural and likewise, the plural shall include the singular; words denoting gender shall be construed to mean the masculine, feminine or neuter, as appropriate; and specific enumeration shall not exclude the general, but shall be construed as cumulative of the general recitation.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the Timberline has executed this Declaration as of the date first written above.

TIMBERLINE GOLF CLUB, LLC  
an Alabama limited liability company

By: Del Clayton  
Name: Del Clayton  
Its: Managing Member  
Date: 10-15-13

STATE OF ALABAMA )

:

SHELBY COUNTY )

I, the undersigned authority, a Notary Public in and for said county in said state, hereby certify that Del Clayton, whose name as Managing Member of TIMBERLINE GOLF CLUB, LLC, an Alabama limited liability company, is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, as such officer and with full authority, executed the same for and as the act of said limited liability company.

Given under my hand and official seal of office, this 15<sup>th</sup> day of August, 2013.

Lawrence 10-18-2016  
Notary Public

[ NOTARIAL SEAL ]

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## EXHIBIT A

### Club Tract - Legal Description

Commence at the Northwest corner of Lot No. 26 of the Timberline Subdivision, Phase 2 as shown by map of said subdivision on record in the office of the Judge of Probate of Shelby County, Alabama, in Plat Book 29 at Page 49; thence proceed South  $26^{\circ} 06' 18''$  West along the Westerly boundary of said Lot No. 46 for a distance of 143.10 feet to the Southwest corner of said Lot No. 46; thence proceed North  $38^{\circ} 28' 07''$  West for a distance of 981.11 feet to the point of beginning. From this beginning point proceed South  $83^{\circ} 13' 15''$  West for a distance of 177.0 feet; thence proceed North  $06^{\circ} 46' 45''$  West for a distance of 108.0 feet; thence proceed North  $83^{\circ} 13' 15''$  East for a distance of 177.0 feet; proceed South  $06^{\circ} 46' 45''$  East for a distance of 108.0 feet to the point of beginning.



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## EXHIBIT B

### Parking Lot Tract - Legal Description

Commence at the Northwest corner of Lot No. 26 of the Timberline Subdivision, Phase 2 as shown by map of said subdivision on record in the office of the Judge of Probate of Shelby County, Alabama, in Plat Book 29 at Page 49; thence proceed South 26° 06' 18" West along the Westerly boundary of said Lot No. 46 for a distance of 143.10 feet to the Southwest corner of said Lot No. 46; thence proceed North 38° 28' 07" West for a distance of 981.11 feet; thence proceed North 06° 46' 45" West for a distance of 108.0 feet to the point of beginning. From this beginning point proceed North 83° 13' 15" East for a distance of 177.0 feet; thence proceed North 01° 27' 31" West for a distance of 128.44 feet; thence proceed North 18° 55' 06" East for a distance of 130.60 feet; thence proceed North 86° 11' 55" East for a distance of 299.27 feet to a point on the Westerly boundary of Timberline Trail; thence proceed South 01° 45' 43" West along the Westerly boundary of said road for a distance of 183.07 feet; thence proceed South 84° 23' 08" West for a distance of 163.24 feet; thence proceed South 06° 46' 45" East for a distance of 52.0 feet to the point of beginning, containing 1.6 acres.



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