

This instrument prepared by and upon  
Recording should be returned to:

Melinda E. Sellers  
Burr & Forman LLP  
420 North 20<sup>th</sup> Street, Suite 3400  
Birmingham, AL 35203

**AMENDED AND RESTATED DECLARATION  
OF  
PROTECTIVE COVENANTS  
FOR  
CREEKwater**

STATE OF ALABAMA  
COUNTY OF SHELBY

This Amended and Restated Declaration of Protective Covenants for Creekwater is entered into this 23rd day of December 2015 by Creekwater Development, LLC, an Alabama limited liability company and the [Creekwater Association], an Alabama nonprofit corporation.

**WHEREAS, CREEKwater DEVELOPMENT, LLC** (“Developer”) is the successor to the Developer rights set forth in the Declaration of Protective Covenants for Creekwater recorded in the Office of the Judge of Probate of Shelby County, Alabama (the “Probate Office”) in Instrument No. 20070724000345110, the Declaration of Protective Covenants for Creekwater Phase 2A recorded in the Probate Office in Instrument No. 20081104000426080, and the Declaration of Protective Covenants for Creekwater Phase 2B recorded in the Probate Office in Instrument No. 20110627000186650 (collectively, the “Creekwater Covenants”) pursuant to the Assignment of Developer Rights recorded in the Probate Office in Instrument No. 20151228000440520

**WHEREAS,** the property described in the Declaration of Protective Covenants for Creekwater recorded in the Probate Office in Instrument No. 20070724000345110 is referred to herein as Phase 1 Property;

**WHEREAS,** the property described in the Declaration of Protective Covenants for Creekwater Phase 2A recorded in the Probate Office in Instrument No. 20081104000426080 is referred to herein as Phase 2A Property;

**WHEREAS,** the property described in the Declaration of Protective Covenants for Creekwater Phase 2B recorded in the Probate Office in Instrument No. 20110627000186650 is referred to herein as the Phase 2B Property;

**WHEREAS,** Developer desires to amend and restate the Creekwater Covenants as set forth below;

**WHEREAS**, Developer is the owner of the property described on Exhibit "A" attached hereto (the "Phase 3 Property") and desires to submit the Phase 3 Property to this Amended and Restated Declaration;

**NOW, THEREFORE**, the Developer does hereby amend and restate the Creekwater Covenants as follows and submits the Phase 1 Property, Phase 2A Property, Phase 2B Property, and Phase 3 Property (collectively referred to herein as the "Property") to this Amended and Restated Declaration as follows:

**I. Exclusive Residential Use and Improvements**

- 1.01 All Lots shall be known and described as residential lots and shall be used for single-family residential purposes exclusively. No lot shall be subdivided or re-subdivided without prior written approval of Developer. It is the responsibility of the Lot Owner to strictly follow those certain codes and ordinances set forth for that particular zoning classification of the municipality in which said lot is located.
- 1.02 No structure shall be erected, altered, placed or permitted to remain on any lot, other than one (1) detached single-family dwelling, not to exceed two and one half (2-1/2) stories, with or without a private garage, and other outbuildings incidental to and necessary for proper residential use of Lot. No mobile home or modular housing is allowed. Any outbuilding will be in conformity to the standards set herein and approved by the Architectural Review Committee (hereinafter referred to as "Committee"), established by Developer pursuant to Article III hereof.
- 1.03 Notwithstanding anything provided to the contrary herein, Developer shall be permitted to construct and maintain on any Lot a structure and related facilities, which may be designed and used as a construction field office and as a sales/marketing office.
- 1.04 Subject to the provisions of Articles VIII below and the rights retained below by the Committee, each Lot and any dwelling, building or other structure constructed or placed thereon shall be subject to the following minimum setbacks:
  - (a) Phase 1 Property set back: Thirty (30) feet from front lot line to nearest line of the main building;
  - (b) Phase 2A Property set back: fifteen (15) feet from the side of the lot to the nearest line of the main building;
  - (c) Phase 2B Property set back: fifteen (15) feet from the side of the lot to the nearest line of the main building;
  - (d) Phase 3 Property set back: Thirty (30) feet from rear lot line and nearest line of the main building;

- (e) Notwithstanding 1.04(d) above, lots 20, 21, 39 and 41 located in the Phase 3 Property setback: Forty (40) feet from rear lot line and nearest line of the main building

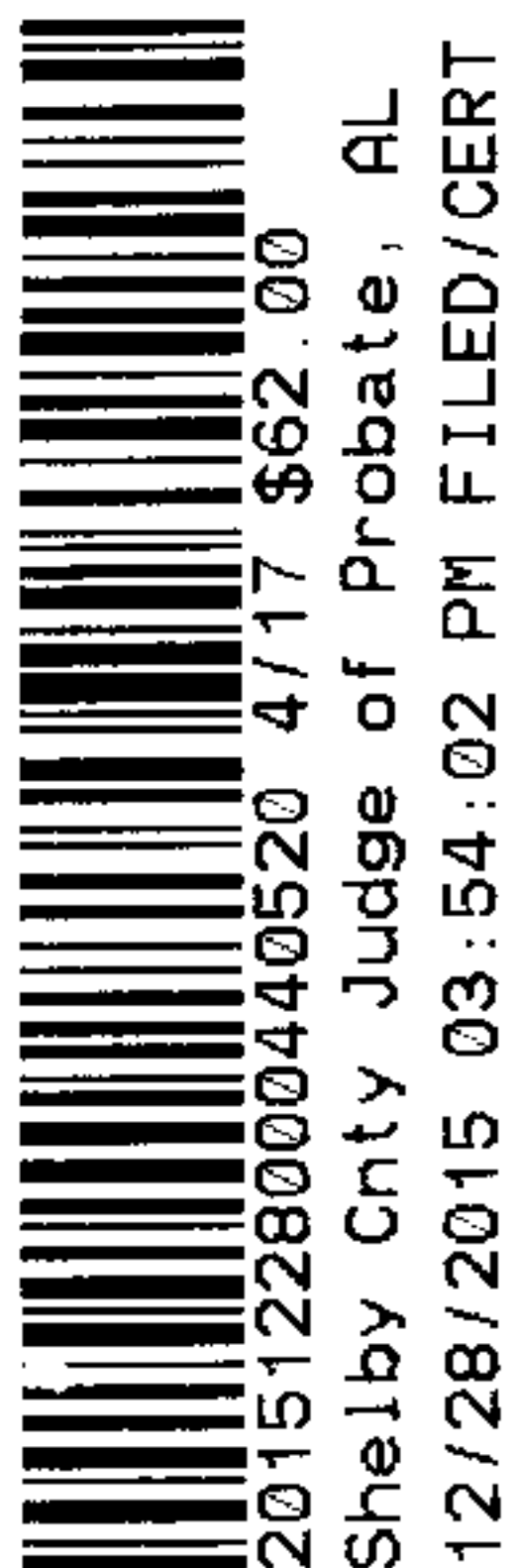
The Committee reserves and shall have the right to grant variances to the foregoing setback requirements with permission from the City of Helena. No structure (other than residential dwelling and any attached garage or guest house) may be constructed closer to the ingress and egress road than the back of the residential dwelling. Any building of any nature, including gazebos, decks and outbuildings built on any Lot must conform to a residential nature and must be approved by the Committee.

- 1.05 No Lot shall be used except for single -family residential purposes. No dwellings shall be erected on any Lot containing less than 2,000 square feet of living area. All dwellings will have wooden, vinyl or painted aluminum windows. The Committee reserves and shall have the right to grant reasonable variances.
- 1.06 The entrance ways to the Development, all areas on the recorded Subdivision Plat which are depicted as common area or beautified easements, and any and all other areas or improvements within the Development which Developer may from time to time in its sole discretion designate as common areas, including, without limitation, recreational amenities, lakes, parks and play areas within the Development, shall be, for the purpose of maintenance of maintenance and upkeep, considered common area (collectively, the "Common Area"), and shall be maintained by the Creekwater Residential Homeowners' Association (herein referred to as the "Association") as herein provided.

## **II. General Requirements**

- 2.01 It shall be the responsibility of each Lot owner (which together with their respective heirs, executors, personal representatives, successors and assignees, is herein after individually referred to as an "Owner" and collectively as "Owners") to prevent any unclean, unsightly or unkept conditions of any dwelling, buildings or grounds on such Owner's Lot which may tend to decreased the beauty of a specific area or of the neighborhood as a whole. The Committee must approve any and all dwellings, buildings, structures and other improvements of any nature to any Lot.
- 2.02 No refuse pile or unsightly object will be allowed to be placed, or allowed to remain upon, any part of any Lot or the Property, including vacant lots or Common Area. Owner shall maintain all lawns and shrubbery. Developer, for itself and the Association, reserves the right (after ten (10) days prior written notice to an Owner) to enter any Lot during normal working hours for the purpose of removing trash or refuse therefrom which, in the sole opinion of either Developer or the Association, detracts from the overall beauty and safety of the Property, and may charge the Owner of such Lot a reasonable cost for such services, which charge shall constitute a lien upon such Lot enforceable by appropriate proceedings at law or equity or as hereinafter provided.

- 2.03 No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs and/or cats (not to exceed two (2) in number) and other indoor household pets may be kept on each Lot provided they are not kept, bred or maintained for any commercial purpose, subject to appropriate zoning ordinances.
- 2.04 No noxious or offensive trade or activity shall be carried on upon and Lot nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood or to the Owners or which would be in violation of any applicable governmental law, ordinance or regulation.
- 2.05 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 oil or natural gas shall be erected, maintained or permitted upon any Lot.
- 2.06 No trash, garbage or other refuse shall be dumped, stored or accumulated on any Lot or Common Area. No trash, garbage or other waste shall be kept on any Lot except in sanitary containers or garbage compactor units. Garbage containers, if any, shall be kept in a clean and sanitary condition. No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted, except during the construction of a dwelling on such Lot, or without approval of or by the Fire Department having Jurisdiction over the Property.
- 2.07 Except as authorized in Section 1.03 above, no structure of a temporary character, trailer, basement tent or shack shall be used at any time as a residence, whether temporarily or permanently, nor shall be allowed to remain on any Lot without the Committee's approval. There shall be no occupancy of any dwelling unit until the interior and exterior of the dwelling is completed upon final inspection by the appropriate governmental authorities, and when a certificate of occupancy has been issued by such governmental authorities.
- 2.08 No sign of any kind shall be displayed to the public view on any Lot except as may be approved by the Committee. All signs shall comply with the design specifications of the Committee. No signs shall be nailed to trees, unless approved by the Committee.
- 2.09 When the construction of any dwelling is once begun, work thereon must be prosecuted diligently and continuously and the dwelling on such Lot must be completed within six (6) months.
- 2.10 Garage doors shall be on the side or rear of dwellings unless otherwise approved by the Committee. Garage doors shall be kept closed when not in use.
- 2.11 Outside air conditioning units may not be located in the front yard or within any side yard adjacent to any street or corner lots. Utility meters shall not be located on the front of a dwelling (unless required by any applicable governmental



authority) and shall not be visible from any street or road. All outside air conditioning units and utility meters shall be screened by appropriate landscaping so as not to be visible from any public street.

- 2.12 Wood frame, vinyl or painted aluminum windows will be used exclusively on the sides, fronts, and rears of all dwellings constructed.
- 2.13 No concrete block work, including foundations (with initial construction exception stated below), concrete block steps, walkways, walls or any other from the exterior of any dwelling, with exception of concrete exposed on foundations due to slab on grade construction.
- 2.14 The Committee shall have the right, in its sole and absolute discretion; to establish what types of exterior building materials may be utilized on any dwelling or other structures or improvements to a Lot.
- 2.15 The Architectural Review Committee shall approve the design, materials and placement of any fence, in advance.
- 2.16 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 both state and local public health authorities. Approval of such system as installed shall be obtained from such authority.
- 2.17 No automobiles or other vehicles will be stored on any Lot or Common Area or kept on blocks unless in the basement or garage of a dwelling. Boats, utility trailers, recreational vehicles and travel trailers must either be parked or stored in the basement or garage of a dwelling or within a completely enclosed structure on a Lot, which structure must be approved by the Committee. No tractor trailer trucks, panel vans or other commercial trucks in excess of one (1) ton classification shall be parked or stored on any Lot of Common Area, except during initial construction of a dwelling on a Lot.
- 2.18 No satellite in excess of 18" in diameter, microwave dishes or television or radio antennas shall be placed on any Lot unless first approved in writing by the Committee, but in no event shall satellite, microwave dishes or television or radio antennas be visible from any street.
- 2.19 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 recommendation of both state and local public health authorities. Approval of such system as installed shall be obtained from such authority.
- 2.20 Upon the completion of a dwelling, all front and side yards on the corner lots will be landscaped with sod and other landscaping approved by the Committee. The rear yard may be seeded.

- 2.21 The main roof pitch on any dwelling shall not be less than 8 & 12, or 3 and 12 on any shed roofs, dormers, or small roofs on second floors, 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 dwelling and not visible from the front. No solar or other energy collection devise or equipment shall be maintained on any Lot or dwelling if the same would be visible from the street. No projections of any type shall be allowed above the roof of any dwelling except for approved chimneys and vent stacks.
- 2.22 All porches on the front and sides of any dwelling shall be supported by the foundation of the dwelling, unless otherwise approved by the Committee.
- 2.23 No cantilevered chimney chases shall be allowed on the front or side of any dwelling. All chimney chases shall be supported by the foundation of the dwelling.
- 2.24 All driveways must be concrete or asphalt finish.
- 2.25 No Lot shall be cultivated for crops of any sort, except gardens of reasonable size, which are to be located at the rear of the dwelling and not visible from any public street.
- 2.26 No fence, wall hedge or shrub planting which obstructs sight lines from any roadways within the Property shall be placed or permitted to remain on any Lot.
- 2.27 All Lots shall be landscaped in accordance with standards established by the Committee. All landscaped areas, on any Lot, shall be maintained in good condition by the Owner thereof.
- 2.28 Developer reserves the right to make any road or other improvements within the Property, to change or extend the present road or other street grades, if necessary, without liability to the Owners for any claims for damages; and further reserves the right to change or modify the restrictions on any Lots within the Property.
- 2.29 During all construction, all vehicles, including those delivering supplies, must enter each Lot on the driveway only as approved by the Committee so as not to unnecessarily damage trees, street paving and curbs. Any damage not repaired by the Owner or his Contractor will be repaired by Developer of the Committee (after ten (10) days written notice) and will be charged to the Owner of such Lot enforceable by appropriate proceedings at law or equity or as hereinafter provided. During construction, all Owners must keep the homes, garages and building sites clean and attractive. No construction debris will be dumped in any area of the Property.
- 2.30 Except with the prior written consent of Developer, no Lot shall be sold, or used for the purpose of extending any public or private road, street or alley or to provide a means of access to any other real property situated adjacent to or close proximity with the Property.

- 2.31 Motorized vehicular traffic of any type is strictly prohibited on any Common Area except as may be required by the Developer of the Association for maintenance or construction.
- 2.32 Woodpiles shall be located at the rear of a dwelling and adjacent Lots. Children's toys, jungle gyms, trampolines and other outdoor recreational equipment and appurtenances shall be allowed only at the rear or behind a dwelling. Freestanding playhouses and tree houses must be approved by the Committee; no above ground swimming pools shall be allowed on any Lot. No statues, water fountains, birdbaths, flagpoles or furniture shall be placed or maintained on the front or side yard of any Lot. All outdoor furniture for any dwelling shall be kept and maintained only at the rear or behind the dwelling. Outside clothes lines and other facilities for drying or airing of clothes are prohibited. No clothing, rugs or other items shall be hung, placed or allowed to remain on any railing, fence or wall. Barbecue grills and other outdoor cooking equipment and apparatus shall be located only at the rear of a dwelling and should not be visible from the public street. No rocks, rock walls, fencing or other substance shall be placed on any Lot as a front or side yard border or to prevent vehicles from parking on or pedestrians from walking on any portion of such Lot or to otherwise impede or limit access to the same. Seasonal or holiday decorations (e.g. Christmas trees and light, pumpkins, Thanksgiving decorations) shall be promptly removed from any Lot or dwelling within thirty (30) days following such holiday.
- 2.33 Fences or any other permanent structures are not to be constructed within any drainage easements.

### **III. Architectural Review Committee**

- 3.01 The Committee will consist of no more than five (5) persons each of whom will be designated and may be removed at any time by the Developer, until such time as Developer relinquishes in writing the authority to appoint members to the Committee to the Association. At such time as Developer no longer owns any Lot within the Property or upon the Developer's written notice to the Association that it no longer desires to exercise the right to appoint and remove members of the Committee, then the Board of Directors of the Association shall have the right to appoint and terminate with or without cause, all members of the Committee.
- 3.02 All plans and specifications, including plot plans, grading and drainage plans for any improvements to a lot, exterior materials, texture and color selections for any dwellings and the plans for all mailboxes and entrance columns serving any Lot within the Property shall be first filed with and approved by the Committee before and construction is commenced on such Lot. The Committee shall have the authority to require modifications and changes in plans and specifications if it deemed the same necessary.
- 3.03 The authority to review and approve plans and specifications as provided herein is a right and not an obligation. Owners (and their respective contractors) shall have

sole obligation to oversee and construct dwellings in accordance with the restrictions hereof and the plans and specifications approved by the Committee. No dwellings, buildings, structures or other improvements of any nature shall be constructed, erected, placed or maintained on any Lot until such time as the Committee has approved in writing the plans therefore. The Committee shall have the right to establish and amend from time to time written rules, regulations and standards governing policies, guidelines and minimum requirements relating to the construction and alteration of any dwellings or other improvements on any Lot, as well as the content and types of information required to be submitted to the Committee for its approval, each of which shall be in addition to the provisions and requirements set forth herein.

- 3.04 Any Exterior remodeling, reconstruction, alterations or additions to an existing dwelling or any activity, which would change or alter the exterior appearance of a dwelling must be approved by the Committee, included but not limited to paint colors. Interior remodeling, reconstruction or alterations not affecting the exterior appearance of a dwelling shall not require the written approval of the Committee, but shall comply with all restrictions and covenants set forth herein.
- 3.05 Neither the Committee, any architect or 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 forgoing provisions, nor for any structural or other defects in any work done according to such plans and specifications. EACH OWNER, BY ACCEPTANCE OF A DEED TO ANY LOT, DOES HEREBY WAIVE AND RELEASE THE COMMITTEE AND DEVELOPER AND ANY SUCCESSORS AND ASSIGNS, FROM ANY LIABILITY OF ANY NATURE WHATSOEVER ARISING FROM DAMAGE, LOSS OR EXPENSES SUFFERED, CLAIMS, PAID OR INCURRED BY ANY OWNER ON ACCOUNT OF ANY DEFECTS IN ANY PLANS AND SPECIFICATIONS 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 III, AND ANY INJURY TO PROPERTY OR PERSON, INCLUDING DEATH, ARISING FROM ANY DEFECT IN ANY IMPROVEMENTS CONSTRUCTED ON SUCH OWNER'S LOT.
- 3.06 The Committee shall, in its sole discretion, determine whether the plans and specifications and other data submitted by any Owner for approval are acceptable. Any approval granted by the Committee shall be effective only if such approval is in writing. The Committee shall have the right to disapprove any plans and specifications upon any ground which is consistent with these covenants, including purely aesthetic considerations, failure to comply with any of the provisions of the Protective Covenants, failure to provide requested information, objection to exterior design, appearances or material, objection on the ground of incompatibility with the overall scheme of development for the Property, objection to the location of any proposed improvements on any Lot, objection to

color scheme, finish, proportions, style of architecture, height, bulk or appropriateness of any dwellings or other improvements on any Lot or any other matter which in the sole and absolute judgment of the Committee, would render the proposed dwelling or other improvements inharmonious with the general plan of development for the Property. The approval of plans, specifications and other data for any one specific dwelling shall not be deemed an approval or otherwise obligate the Committee to approval similar plans, specifications or data for any other dwelling to be constructed on any Lot within the Property.

- 3.07 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 plans and specifications submitted pursuant to the provisions hereof. Furthermore, the Committee shall, upon request and at reasonable charges, furnish to any Owner a written certificate setting forth whether all necessary Committee approvals have been obtained in connection of any dwelling or other improvements on any Lot.
- 3.08 The Committee, in its sole and absolute discretion, shall have the 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 and shall be executed by either the Chairman or the Vice-Chairman of the Committee.
- 3.09 Each and every covenant and restriction contained herein shall be considered to be an independent and separate covenant and agreement, and, in the event any one or more of said covenants or restrictions shall, for any reason, be held to be invalid or unenforceable, all remaining covenants and restrictions shall nevertheless remain in full force and effect.

#### **IV. Residential Association, Inc.**

- 4.01 Every Owner of a Lot within the Property and the Owner of every "Residential Lot", hereinafter defined in the Development, is subject to assessments, as hereinafter provided, and shall be a member of the Association (The Certificate of Formation for which are recorded in the Probate Office of Shelby County, Alabama in Instrument Number 20140522000155170. Membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot and shall be subject to the provisions of these Protective Covenants and the rules, regulations and bylaws of the Association, as the same may be modified and amended from time to time.
- 4.02 The Association shall have one (1) class of voting membership. All Owners, together with the Owners of all "Residential Lot", hereinafter defined, shall be members of the Association and, subject to the rights reserved by Developer in The Certificate of Formation and Bylaws of the Association, shall be entitled to one (1) vote for each Residential Lot owned. When more than one (1) person holds and interest in any Lot, all persons shall be members; however, the vote for such Lot shall be exercised as they determine, but in no event shall more than (1) vote be cast with respect to any Lot. Each Owner, by acceptance of a deed to a

Lot, does hereby acknowledge and agree that (a) Developer, for as 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 Certificate of Formation and Bylaws of the Association, and (b) if Developer elects to add Additional Property to this Declaration or as part of the Association or modify the description of the Development to add or delete real property from such description, each Owner consents and agrees to the dilution of his voting interest in the Association as a result thereof.

- 4.03 The Association (with the prior written consent of Developer for so long as Developer owns any portion of the Development), shall have the right at any time and from time to time to merge, consolidate or otherwise transfer all of the rights and obligations of the Association to any other association which has been formed for the benefit of the Owners of any Lots within the Property or any real properties situated adjacent to or in close proximity with the Development.

**V. Covenant for Assessments**

- 5.01 Each Owner of a residence with the Property, by acceptance of a deed to such residence agrees to pay to the Association: (1) Annual assessments or charges levied each year by the Association, (ii) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided, and (iii) individual assessments which may be levied against and Lot and the Owner thereof as a result of such Owner's failure to comply with the terms of these Protective Covenants. The annual, special and individual assessments, together with interest, late-charges, cost and reasonable attorney's fees, shall also be a charge on each Lot and shall be a continuing lien upon each Lot against such assessment is made, which lien may be enforced in the manner hereinafter provided. Each such assessment, together with interest, late charges, costs and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due or was due.
- 5.02 The annual and special assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and residents of the Development, for the improvement and maintenance of the Common Area within the Development, for the improvement and maintenance of the stormwater system and detention pond maintenance plan pursuant to Article VII herein, and for the payment of any and all costs and expenses incurred from time to time by the Association, including, without limitation, any "Common Expenses", as defined in the Bylaws of the Association.
- 5.03 Any expenses incurred by the Committee or the Association in enforcing any of these Protective Covenants against a specific Owner shall be deemed an individual assessment against the Owner and the respective Lot owned by such Owner. Such individual assessment shall be levied by the Association and shall

be specified to the Owner, which notice shall also specify the due date for the payment. The Association is solely responsible for and shall assume all maintenance responsibilities with respect to all Common Area with the Property.

- 5.04 The annual assessment for the property shall commence on January 1 of each year and shall be paid in advance. The annual assessment for each residential lot for the Property shall be \$250.00 per annum per residential lot and may be increased or decreased from time to time by the Board of Directors of the Association in accordance with the projected annual budget of the Association. The Developer shall not be subject to any assessment by the Association, be it annual, special or individual.
- 5.05 In addition to the annual assessments, the Association may levy assessments in any defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, provided that any such assessment must have the assent and approval of (a) at least fifty-one (51%) of the total votes in the Association, whether voted in person or by proxy, at a meeting duly called for this purpose and (b) for as long as Developer owns any portion of the Development, the approval of the Developer.
- 5.06 Written notice of any meeting called for the purpose of taking any action authorized under Section 5.05 above shall be sent to all 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 fifty-one (51%) of the total votes in the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting.
- 5.07 Both annual and special assessments for all Lots within the Property shall be fixed at a uniform rate; provided, however, that the Board of Directors of the Association shall have the right, in their sole and absolute discretion, to levy, assess and collect different amounts of the annual and/or special assessment payable by each "Residential Lot", as hereinafter defined, within the Development based on the zoning classification of such residential Lot. As used herein, the term "Residential Lot" or "Residential Lots" shall mean and refer to any real property within the Development which has been or will be developed for single-family residential purposes, including, without limitation, attached or detached dwellings, townhouses, condominiums, cooperatives, duplexes, garden homes, patio homes, zero-lot-line homes, cluster homes, or any other types of single-family dwellings. As used herein and in the Certificate of Formation and the Bylaws of the Association, the term "residential Lots" whether used in the singular or plural tense, shall include all Lots within the Property. Annual and Special Assessments shall commence as to each Lot on the day on which such Lot is payable in such manner as established by the Board of Directors of the Association. The Board of Directors of the Association shall fix the amount of

the annual assessment period. Written notice of the annual assessment shall be sent to every Owner. The due date for the payment of annual assessments shall be established by The Board of Directors in such notice (but such date shall be, at a minimum, thirty (30) days from the date of such notice).

- 5.08 The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an Officer of the Association setting forth whether the assessment on a Lot has been paid. A properly executed certification of the Association as the status of the assessment on a Lot is binding upon the Association as of the date of its issuance.
- 5.09 Any assessments (whether 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 the rate equal to the lesser of 18% per annum or the highest rate which may be charged to such Owner by law. In addition to interest, any assessment not paid by the due date for the same shall be subject to a late charge which the Board Of Directors of the Association may from time to time establish. In the event any assessment or other amounts due to the Association are not paid by any Owner when it comes due, then, in addition to all other right and remedies provided by law or in equity, the Association, acting through the Board Of Directors 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 Owner for a personal money judgment 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 as all attorneys' fees, court cost and all other expenses paid or incurred by The Association in connection therewith; and/or
  - (b) The Association may enforce the lien created pursuant to Section 5.01 above as hereinafter provided. The lien created pursuant to Section 5.01 above shall secure payment of any and all assessments (annual, special and individual) levied against any Lot or Owner, all late charges and interest as provided above as well as all attorneys' fees, court costs and all other expenses paid or incurred by the association in attempting to collect the assessments and in maintain 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 Owner, which demand shall state the date and the 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 lien against the Lot of such delinquent Owner, which claim shall be executed by any member of the Board of Directors of the Association 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 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 Owner, by acceptance of a deed to any Lot, shall be deemed to (I) grant and vest 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 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 Owner (other than Developer) may waive or otherwise be exempt from the liability to pay assessments provided herein.

- 5.10 The lien for assessments and other charges provided herein with respect to any Lot shall be subordinate to the lien of any first mortgage encumbering such Lot. The sale or transfer of any Lot shall not affect any lien retained by the Association of a Lot; provided, however, that the sale or transfer of any Lot pursuant to mortgage foreclosure or any similar proceedings shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer.
- 5.11 In addition to the right and remedies set forth above, if any Owner (or his contractor, family members, guest or invitees) shall violate or attempt to violate any of the covenants, then Developer, the Association, or the Committee, jointly and separately, shall each have the right to prosecute proceedings at law for the recovery of damages against such Owner as a result of such violations or maintain a provided, however, that right and remedies set forth herein shall be deemed to be cumulative of all other rights and remedies available at law or in equity. In any such proceedings, Developer, the Association, or the Committee, jointly and separately, shall be entitled to recover all costs and expenses, including reasonable attorneys' fees, incurred by any of them in such proceeding as well as interest on all unpaid amounts as specified in Section 5.09 above. The failure of Developer, the Association or the Committee to institute proceedings for any one (1) or more violations of these Protective Covenants shall not constitute approval of the same or be constructed as a waiver of any right of action contained herein for past or future violations of said covenants and restrictions.

## **VI. Easement**

- 6.01 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.

- 6.02 Developer does hereby establish and reserve for itself, its successors and assigns, a permanent and perpetual nonexclusive easement over, across, through, upon and under those portions of any Lot upon which 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 sewer, sanitary sewers, conveniences, appurtenances and other utilities.
- 6.03 Developer does hereby establish and reserve for itself, its successors and assigns, a permanent and perpetual nonexclusive easement over, across, through, upon and under all lots for the purpose of 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.
- 6.04 Subject to any applicable rules and regulations adopted from time to time by the Association and the payment of any fees and charges which may from time to time be established by the Association, Developer does hereby grant to the Association and each Owner the non-exclusive right, privilege and easement of access to and the use of the Common Area in common with Developer, its successors and assignees.

## **VII. Miscellaneous**

- 7.01 Developer reserves the right, in its sole and absolute discretion, at any time and from time to time, to add and submit any additional property (the "Additional Property") situated adjacent to or in close proximity within the Property to the terms and provisions of these Protective Covenants. Additional Property may be submitted to the provisions of these Protective Covenants by an instrument executed solely by Developer and filed for record in the Probate Office of Shelby County, Alabama, which instrument shall be deemed an amendment to these Protective Covenants which need not be consented to or approved by any Owner of his mortgagee and which may contain different terms, conditions, restrictions and provisions from those set forth herein. From and after the date on which an amendment to these Protective Covenants is recorded in the Probate Office of Shelby County, Alabama submitting any Additional Property to the terms and provisions hereof, (a) all references herein to Owner shall include Owners of all Lots within the Property and the Owners of all Lots within such Additional Property; (b) All references herein to the Property shall include the Additional Property; and (c) the number of votes in the Association shall be increased by the number of Lots within the Additional Property so that there shall continue to be one (1) vote in The Association per Lot within the Property. In no events shall Developer be obligated to submit any Additional Property to the provisions of theses Protective Covenants or to otherwise impose any covenants, conditions or restrictions set forth herein upon any other real property owned by Developer situated adjacent to or in close proximity within the Property.

- 7.02 The terms and provisions of these Protective Covenants shall be binding upon each Owner and their respective heirs, executors, administrators, personal representatives, successors and assignees of each Owner and shall inure to the benefit of Developer, the Committee, the Association and all of the Owners of any Lots within the 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 the Protective Covenants.
- 7.03 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 often (10) years, unless, by a vote of at least fifty-one percent (51%) of all votes in The Association, it is agreed to change the same in whole or part.
- 7.04 These covenants and restrictions may be amended or altered (a) solely by Developer during such periods time as the Developer owns any Lots within the Property, so long as such amendment does not materially and adversely affect or alter any Owner's right to use his/her Lot or (b) by the (I) vote of fifty-one percent (51%) of all votes in the Association and (II) written agreement of the Developer.
- 7.05 All personal pronouns used herein, whether used in masculine, feminine or neutral gender, shall include the plural and vice versa.
- 7.06 Each Owner hereby waives any right to seek or obtain judicial partition of any portion of the Property.
- 7.07 Notwithstanding anything 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 the 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.
- 7.08 Whenever in these Protective Covenants, Developer, the Association or the Committee has the right to approve, consent to or require any action to be taken, such approval, consent or required action shall, except as otherwise specifically provided herein to the contrary, be given or withheld in the sole and absolute discretion of Developer, the Association or the Committee, as the case may be.
- 7.09 Developer states that portions of the Development may include rainwater detention areas which are represented as detention easements and must be maintained by each lot owner whose lot lines cross the easement and will be marked on the final plat.

IN WITNESS WHEREOF, the Developer has executed this Amended and Restated Declaration of Protective Covenants with an effective date as set forth above.

**CREEKWATER DEVELOPMENT, LLC**  
an Alabama limited liability company

By: [Signature]  
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 J.R. Adams, whose name as member of Creekwater Development, LLC, a corporation, is signed to the foregoing document, and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and seal, this 23<sup>rd</sup> day of December, 2015.

[Signature]  
NOTARY PUBLIC

[SEAL]

My Commission Expires: 8/16/16

  
20151228000440520 16/17 \$62.00  
Shelby Cnty Judge of Probate, AL  
12/28/2015 03:54:02 PM FILED/CERT

## EXHIBIT "A"

### LEGAL DESCRIPTION OF PHASE IIIA PROPERTY

A parcel of land located in the Southwest  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  and the Northwest  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 26 and the Southeast  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  and the Northeast  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of Section 27, Township 20 South, Range 4 West, of the Huntsville Meridian, Shelby County, Alabama being more particularly described as follows:

Commence at a 3" capped pipe being the Northwest corner of the Southeast  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of Section 27, Township 20 South, Range 4 West; thence S  $0^{\circ}13'14''$  E along the west line of said  $\frac{1}{4}$  -  $\frac{1}{4}$  section for a distance of 1,118.09 feet to a rebar capped Paragon; thence N  $89^{\circ}27'21''$  E, leaving said  $\frac{1}{4}$  -  $\frac{1}{4}$  line for a distance of 506.31 feet to a point, said point lying on the proposed boundary line of Creekwater Subdivision Phase IIIA and the POINT OF BEGINNING; thence S  $40^{\circ}29'10''$  E, along the boundary of said proposed subdivision for a distance of 375.60 feet to a point; thence S  $48^{\circ}36'34''$  W for a distance of 29.92 feet to a point; thence S  $40^{\circ}29'10''$  E for a distance of 227.25 feet to a point; thence S  $47^{\circ}33'15''$  W a distance of 130.08 feet to a point; thence S  $45^{\circ}49'19''$  W for a distance of 130.27 feet to a point; thence S  $39^{\circ}29'34''$  W for a distance of 142.17 feet to a point; thence N  $40^{\circ}29'10''$  W for a distance of 127.31 feet to a point on the proposed eastern right of way of Highway 277; thence N  $69^{\circ}15'49''$  W for a distance of 50.00 feet to a point on the proposed western right of way of Highway 277; thence S  $20^{\circ}44'11''$  W, along said right of way, for a distance of 58.48 feet to a point located on a curve to the right, said curve having a radius of 575.00 feet, the chord of which bears S  $22^{\circ}47'57''$  W for a distance of 41.39 feet; thence along said arc for a distance of 41.40 feet to a point; thence S  $24^{\circ}51'44''$  W for a distance of 57.99 feet to a point on a curve to the left, said curve having a radius of 275.00 feet, the chord of which bears S  $7^{\circ}39'11''$  E for a distance of 295.64 feet; thence along the arc of said curve for a distance of 312.12 feet to a point of reverse curve to the right, said curve having a radius of 225.00 feet, the chord of which bears S  $5^{\circ}43'42''$  E for a distance of 254.49 feet; thence along said arc and proposed right of way for a distance of 270.49 feet to a point; thence S  $61^{\circ}17'19''$  E, leaving proposed western right of way of highway 277 for a distance of 50.00 feet to a point lying on the proposed eastern right of way of Highway 277, said point lying on a curve to the left having a radius of 275.00 feet, the chord of which bears N  $19^{\circ}21'03''$  E for a distance of 89.46 feet; thence along said arc and proposed eastern right of way for a distance of 89.86 feet to a point; thence N  $67^{\circ}14'31''$  E, leaving proposed eastern right of way and along the boundary of Proposed Creekwater Subdivision Phase IIIA for a distance of 677.47 feet more or less to the centerline of Hurricane Creek; thence northeasterly along the meanders of Hurricane Creek for a distance of 1,314 feet more or less to a point lying on the centerline of Hurricane Creek, the chord of said meanders bears N  $50^{\circ}18'01''$  E for a distance of 1,107.24 feet; thence Northwesterly continuing along the meanders of Hurricane Creek for a distance of 415 feet more or less to a point on the centerline of Hurricane Creek; the chord of said meanders bears N  $34^{\circ}38'50''$  W for a distance of 396.80 feet; thence S  $89^{\circ}25'52''$  W, leaving Hurricane Creek, for a distance of 458.18 feet to a rebar capped Paragon; thence S  $89^{\circ}27'21''$  W for a distance of 829.77 feet and the POINT OF BEGINNING.

The above described parcel contains 27.4 Ac.  $\pm$