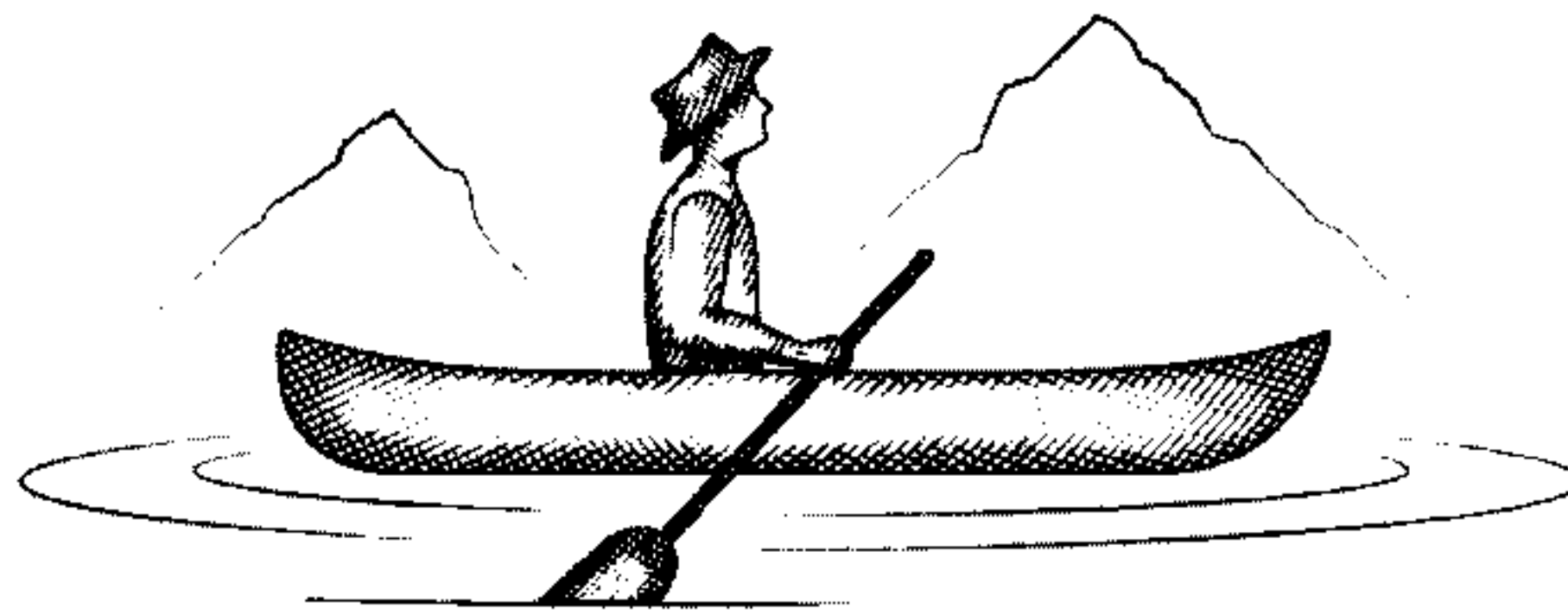


**DECLARATION OF PROTECTIVE  
COVENANTS AND AGREEMENTS**

**For**

**THE HIGHLANDS**



**THE HIGHLANDS**

**EST • 2016**



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Shelby Cnty Judge of Probate, AL  
12/28/2016 09:53:35 AM FILED/CERT

STATE OF ALABAMA:

SHELBY COUNTY:


**DECLARATION OF PROTECTIVE  
COVENANTS AND AGREEMENTS  
FOR  
THE HIGHLANDS**

KNOW ALL MEN BY THESE PRESENTS, THAT:

WHEREAS, TWO MOUNTAINS, LLC (the "Founder"), an Alabama limited liability company has heretofore acquired fee simple title of certain real property situated in Shelby County, Alabama (the "Property"), as more particularly described in the map and survey of the Property recorded in Map Book 47, Pages 17A, 17B and 17C, in the Probate Office of Shelby County, Alabama (the "Subdivision Plat"), which Property has been subdivided into 34 each 2 +/- acre lots (the "Lots") as described in the Subdivision Plat; and

Whereas, the Founder desires to develop the Property into a residential subdivision to be known as subject to the protective covenants, agreements and easements set forth in this Declaration of Protective Covenants and Agreements for the subdivision (hereinafter referred to as the "Declaration");

NOW, THEREFORE, the Founder does, upon recording hereof, declare and make the Property and each of the Lots included in the subdivision of the Property subject to the covenants, conditions, restrictions, uses, limitations, and affirmative obligations set forth in this Declaration, all of which are declared to be in furtherance of a plan for the improvement of the Property in a desirable and uniform manner suitable in architectural design, and all of which shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, and shall be for the benefit of each Owner (as defined below) and shall inure to the benefit of and be binding upon each successor in interest to such Owners thereof. As used herein, the term "Owner" or "Lot Owner" shall mean the record owner, whether one or more persons or entities, of the fee simple title to any Lot, but shall not include those having such interest merely as security for the performance of an obligation (e.g. a mortgagee).

  
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## ARTICLE 1

### LAND USE AND BUILDING TYPE

Land Use and Building Type. The Property will be used for residential and community purposes only, industrial purposes including any type of home industry will not be permitted. No building or structure other than a single family dwelling shall be erected within the Property except as otherwise permitted herein.

## ARTICLE 2

### BUILDING REQUIREMENTS

1. Minimum Structure Size. The main resident structure erected or placed on any Lot within the Property shall include not less than 2000 square feet minimum finished area, including porches, garages and carports on the main level with a total 2600 square feet minimum living space required. Living space is defined as heated and cooled finished area and does not include porches, garages, basements, carports, or attics.
2. Design Criteria. The objective of the Architectural Review Board (hereinafter referred to as "The ARB") established pursuant to Article 3 shall be to present a traditional architectural environment for the Property. Accordingly, the ARB shall be directed to encourage the development of architecturally designed houses (e.g. Craftsman, Arts and Crafts, French Provincial, French Country, Tudor Revival or traditional design consistent with the neighborhood and development under the sole discretion of the ARB), and the ARB is directed to decline any structure not in keeping. Preliminary designs or schematics should be submitted to the ARB as early as possible for review. The ARB has full authority and discretion over all design criteria within the Property and its decisions are final.
3. Exterior Design Criteria. The exterior design of the structures within the Property shall be in accordance with the following, subject to final approval by the ARB:
  - A. The exterior materials which are acceptable to the ARB shall include painted or mortar-washed brick, stone, stained, cement board or painted wood. A house may not have more than 30% of its exterior in unpainted conventional red brick. A house with all siding (no stone) is discouraged and may not be approved except under special circumstances. Any exceptions must be approved in writing by the ARB.
  - B. Exterior painting will be in soft tones not to include high gloss finishes of bright colors.
  - C. All windows must be wood frame, clad encased, or steel. Clad windows are acceptable. All windows must have true divided lites or simulated true-divided lites. No snap in/removable grids are allowed under any circumstances.
  - D. Roofs on all structures must have a minimum 8/12 pitch. No Gambrel or Mansard roofs will be

permitted (with the exception of barns or out structures) without full details outlining the design and materials to be used and any other information required by the ARB. Shingles must be of a natural color, slate, or cedar shakes. No white roofing materials of any kind will be permitted. Metal or standing seam roofs are permitted however all selections must be submitted and approved by ARB.

E. All stack pipes, exhaust fans, and other roof projections shall be located on the rear or side of building roofs, and painted to match the approved roofing color.

F. Front steps shall be constructed of brick or stone, the same as that approved by the ARB.

G. All shutters shall be wood paneled or typical wood louvered.

4. Temporary Structures. No trailers, tent, shack, or barn shall be erected on any Lot within the Property prior to the completion of a dwelling house or at any time thereafter.

5. Building Locations. The minimum build line offset for all structures will be 75' from the centerline of roadway. The location of any structure, alteration, or addition in relation to the side boundaries of any Lot within the Property will be determined according to the requirements of the local governmental authority having jurisdiction over the Property, along with the ARB.

6. Garages and Other Structures. The objective of the ARB will be to prevent the visibility of garage openings from the street and neighboring yards to the extent practical. The ARB shall require automatic garage door closure for garages which are visible or partially visible from the street and shall require satisfactory screening for open garages facing neighboring yards. Detached garages and other structures shall match the main structure décor and exterior. A design for any detached structure shall be submitted and approved by the ARB.

7. Carports. Carports will require special approval by the ARB. Open carports visible from the street will require a minimum of 36" water table on the street facing side.

8. Fences and Hedges. No fences or walls shall be constructed unless first approved by the ARB. The approval of the ARB shall be governed by the following:

A. No fences or walls may be built above the grade of the Lot in front of the rear line of the main residential dwelling house, except any fence or wall which appears to the ARB to be an integral part of the architecture.

B. On corner Lots, no fence may protrude into the side yard on the side nearest the adjoining street.

C. On corner Lots, no fence may protrude beyond the building line of any adjacent Lot.

D. No standard chain link, wire, vinyl, or metal fence on any kind may be constructed. Black, brown or gray fencing will be allowed if not visible from the street. Wrought Iron will be allowed within view of the street.

- E. All street facing fences must have stone columns with a minimum spacing 25 feet on center. Stone columns are to match stone used on the house.

9. Utilities, Wiring and Antennas.

- A. To the extent of the interest of the Owner of a Lot within the Property, no facilities, including poles and wires, for the transmission of electricity, telephone messages and the like shall be placed or maintained above the surface of the ground on any Lot and no external or outside antenna of any kind shall be maintained within view of the street.
- B. To extent of the interest of an Owner of a Lot, will not erect or grant any person, firm or corporation a right, license or privilege to erect or permit the use of overhead wires, poles, or overhead facilities of any kind for electrical or telephone services on the Property (except such poles and overhead facilities as may be required at those places where distribution facilities enter and leave the particular area) without the prior written consent of the ARB.
- C. To the extent of the interest of the owner of each Lot, such Owners agree to connect utility service lines (including, but not limited to, gas, water, sewer, cable television, and electricity) at points designated by the Founder. Such connection from the pole shall be underground unless otherwise approved by ARB.

10. Easements. Easements to each Lot for the installation and maintenance of utilities and drainage facilities are reserved as shown on the Subdivision Plat. Known easements to include the designated sewer easement and landscape buffer as stated in the engineering covenants.

11. Mailboxes and Lamp Posts. All mailboxes, lamp posts, street lighting and posts must be models and purchased from vendors specified by ARB, and constructed and located according to the Founder's specifications and according to the design theme established in the design criteria documents.

12. Landscaping. Since the area is mostly "natural", the landscape criteria require that at least 30% of the front landscaped area be cleared and landscaped with straw or bark. Further, the area approaching the driveway must be landscaped to establish a more "groomed" area for approach. The front of the home, including the approach area at the mailbox and driveway must be presented and approved by the ARB before final design approval will be granted.

13. Trees and Tree Deposit. Trees having diameters of greater than 10 inches for each Lot must be plotted and submitted to the ARB by the Lot Owner prior to any construction or clearing activity. The Lot Owner may remove such trees and their root systems only where the ARB has given its prior written approval (as approved, the "Approved Tree Plan"). Additionally, the Lot Owner shall deposit the sum of \$5,000.00 (the "Tree Deposit") with the Founder to ensure compliance with the Approved Tree Plan. The Founder may apply all or any portion of the Tree Deposit to pay costs incurred by the Founder in

connection with a breach of the Approved Tree Plan by the Lot Owner, including without limitation, costs of consulting services required by the Founder and costs incurred by the Founder to replace any trees removed by the Lot Owner in violation of the Approved Tree Plan.

14. Walls. No crosstie walls in front of building walls. Stone landscape walls are allowed and should match the existing house stone.

15. Lighting. All exterior lighting of houses shall be in character and keeping with the general subdivision. Yard lighting shall be such that it does not shine and disturb adjoining land owners. Seasonal or holiday lighting that is out of character with the general subdivision or becomes a nuisance as determined by the ARB will be removed within two (2) day notice of the ARB's decision.

16. Lawns. All street front facing property must have a minimum 4 feet (or 3 standard 16" x 24" pieces) of sod or seeded grass extending from the road or curb for a specific Lot for the entire road frontage for such Lot on either side of the entrance to such Lot. It shall be the Lot Owner's responsibility to install, cut, trim and maintain the appearance of all grass-lawn areas visible from the street.

### **ARTICLE 3**

#### **ARCHITECTURAL REVIEW BOARD**

1. Approval of ARB. No structure, building, or fence shall be commenced, erected, placed, moved on to or permitted to remain on any Lot within the Property, nor shall any existing structure upon any Lot within the Property be altered in any way which materially changes the exterior appearance thereof, unless plans and specifications thereof shall have first been submitted to and approved by the ARB (herein defined). Such plans and specifications shall be in such form and shall contain such information, as may be required by the ARB and shall include, but not necessarily be limited to:

- A. A site plan of the Lot showing the location, height, and exterior design (including a summary of all proposed materials together with samples of exterior materials and paint colors) of all buildings and improvements proposed to be constructed on the Lot,
- B. A grading, landscaping and drainage plan for the Lot. The plans shall be submitted to the ARB at the general office of the Founder or Architect at least fifteen business days prior to the date construction is scheduled to commence and the ARB shall be entitled to retain said plans for its records. All grading and drainage must comply with the drainage plan as submitted by the engineer and approved by the county.

2. Architectural Review Board. The ARB shall be composed of three individuals designated by the Founder and/or Architect. The affirmative vote of a majority of the members of the ARB shall be required in order to issue any permit, authorization or approval pursuant to the directives or

authorization set forth herein.

3. Evidence of Approval. The approval of the ARB shall be evidence by a written permit executed by one or more members of the ARB and countersigned by the applicant therefor. The written permit shall be executed in duplicate with one copy to be retained by the applicant.

4. Basis for Disapproval of Plans.

A. The scope of review by the ARB shall be limited to appearance only. THE ARB DOES NOT ASSUME OR ACCEPT BY THE FILING HEREOF ANY RESPONSIBILITY OR AUTHORITY TO REVIEW FOR STRUCTURAL SOUNDNESS, COMPLIANCE WITH BUILDING OR ZONING CODES OR STANDARDS, OR ANY OTHER FACTORS RELATED TO THE SAFETY, QUALITY OF CONSTRUCTION, OR TECHNIQUES USED IN CONSTRUCTION.

B. The ARB shall have the right to disapprove any plans and specifications submitted for approval for any of the following reasons:

1. Failure of such plans and specifications to comply with the covenants and restrictions herein set forth;
2. Failure to include in such plans and specifications as may have been reasonably requested by the ARB;
3. Objection to exterior design, appearance or materials of any proposed structure or improvement;
4. Incompatibility of any proposed structure or improvement or use thereof with existing structures or uses upon other Lots in the Property;
5. Objection to the site plan, clearing plan, drainage plan for any parcel;
6. Objection to the color scheme, finish, proportions, style of architecture, height, proportions, or appropriateness of any proposed structure or improvement.
7. Failure of plans to take into consideration the particular topography, vegetative characteristics, adjacent properties, and natural environment of the Lot;
8. Any other matter which, in the judgement of the ARB, would render the proposed structure, improvement or uses inharmonious with the general plan of improvement of the Property or with structures, improvements, or uses located upon other Lots in the Property.

C. Approval of plans and specifications submitted to the ARB shall terminate and be rendered void if construction is not begun within six (6) months after the date of the certificate evidencing such approval unless such six (6) month period is extended by the ARB in which event the extended time period shall be applicable.

D. In any case where the ARB shall disapprove any plans and specifications submitted hereunder, or shall approve the same only as modified or upon specification conditions, such disapproval or qualified approval shall be accompanied by a statement of the grounds upon which such action was based. In any such case, the ARB shall, if required, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal can be prepared and submitted for approval.

5. Retention of Copy of Plans. Upon approval by the ARB of any plans and specifications submitted hereunder, a copy of such plans and specifications as approved shall be deposited for permanent record with the ARB, and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same.

6. Failure to Obtain Approval. If any structure or improvement shall be altered, erected, placed or maintained upon any Lot, or any new use commenced on any Lot, otherwise than in accordance with plans and specifications approved by the ARB pursuant to the provisions of this Article 3, such alteration, erection, maintenance or use shall be deemed to have been undertaken in violation of this covenant, and without the approval required herein, and upon written (letter or email) notice from the ARB, any such structure or improvement so altered, erected, placed or maintained upon any Lot in violation hereof shall be removed or realtered, and any such use shall be terminated, so as to extinguished such violation.

If fifteen (15) days after the notice of such a violation the Owner of the Lot upon which such violation exists shall not have taken reasonable steps toward the removal or termination of the same, the Founder shall have the right, through its agents and employees, to enter upon such Lot and to take such steps as may be necessary to extinguish violation and the cost thereof shall be a binding, personal obligation of such Owner as well as a lien (enforceable in the same manner as a mortgage) upon the Lot in question. The lien provided in this covenant shall not be valid as against a bona fide purchaser (or bona fide mortgage) of the Lot in question unless a suit to enforce said lien shall have been filed in a court of record in Shelby County prior to the recordation among the Land Records of Shelby County of the deed (or mortgage) conveying the Lot in question to such purchaser (or subjecting the same to such mortgage).

7. Certification of Compliance. Upon completion of the construction or alteration of any structure or improvement in accordance with plans and specifications approved by the ARB, the ARB shall upon written request of the Owner thereof, issue a certification of compliance in form suitable for recordation, identifying such structure or improvement and the Lot on which such structure or improvement is placed, and stating the plans and specifications, the location of such structure or improvement and the

use or uses to be conducted thereon have been approved and that such structure or improvement complies with the requirement of the ARB, Preparation and recording of such certification shall be at the expense of such Owner. Any certificate of compliance issued in accordance with the provisions of this Section shall be prima facie evidence of the facts therein stated, and as to any purchaser or encumbrance in good faith and for value, or as to any title insurer, such certificate shall be conclusive evidence that all structures or improvements on this Declaration as to which the ARB exercises any discretionary or interpretive powers.

8. Inspection Rights. Any agent of Founder or the ARB may at any reasonable time or times enter upon and inspect any Lot and any improvements thereon for the purpose of ascertaining whether the maintenance of such Lot and the maintenance, construction, or alteration of structures and improvements thereon are in compliance with the provisions hereof; and neither Founder nor the ARB nor any such agent shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

9. Waiver of Liability. Neither the ARB nor any architect nor agent thereof, nor Founder, nor any partner, agent, or employee of any of the foregoing, shall be responsible in any way for any failure of structures or improvements to comply with requirements of this Declaration, even if a certificate of compliance has been issued; any defects in any plans and specifications submitted, revised, or approved in accordance with the foregoing provisions, nor for any structural or other defects on any work done according to such plans and specifications and all persons submitting any such plans and specifications, and all persons relying thereon, agree not to sue or claim against the entities and persons referred to in this Section and further agree to and do hereby release said entities and persons for any and every such cause.

#### **ARTICLE 4**

##### **USE OF THE PROPERTY**

1. Landscape Alteration. No major landscape alteration (i.e. tree removal, design change, etc.) shall be made without the express written authorization of the ARB. In carrying out the provisions of this Section, the Founder and the ARB and the respective agents if each may come upon any part of the Property during reasonable hours for the purpose of inspecting landscape installation or in relation to the enforcement and administration of the provisions hereof. Neither the ARB nor Founder nor their respective agents shall be deemed to have committed a trespass or wrongful act by reason of any such entry or inspection.

2. Signs. No sign of any kind shall be displayed to the public view except signs of not more than five (5) square feet to advertise a home for sale or builder's signs during construction and prior to the

sale of the home by the builder. All signage must be approved by the ARB prior to installation.

3. Animals. No animals, birds, livestock or insects shall be kept or maintained on any of the Property except that Owner of a Lot may maintain not more than two dogs and two cats as domestic pets, provided that such domestic pets are confined to the Lot of the owner of such pets.

4. Garbage and Refuse. No lumber, metals, or bulk materials shall be kept, stored, or allowed to accumulate on any Lot within the Property, except building materials during the course of construction of any approved structure or improvement. No refuse or trash shall be kept, stored, or allowed to accumulate except between scheduled pick-ups and in accordance with the provisions hereof. If trash or other refuse is to be disposed of by being picked up and carried away on a regular and recurring basis, such trash or refuse must be placed in sanitary containers. Such sanitary containers may be placed in the open, on any day that a pick-up is to be made, at such place on the Lot as required by garbage collection service. All other times such containers shall be stored in such manner so that they cannot be seen from adjacent surrounding property.

5. Outside Burning. Burning of trash, refuse or other materials on any Lot within the Property shall be prohibited without valid burning permits from Shelby County.

6. Pipes. No water pipe, gas pipe, sewer pipe, or drainage pipe shall be installed or maintained above the surface of the ground of any Lot within the Property, except for hoses and movable irrigation

7. Nuisance. No obnoxious, offensive or illegal activity shall be carried on upon any Lot within the Property nor shall anything be done on any Lot within the Property which may become an annoyance or nuisance to other Lots within the Property.

8. Storage of Boats and Trailers. Storage of boats, boat trailers, house trailers, campers, recreational vehicles or similar equipment or vehicles in the open on any Lot shall be prohibited.

9. Parking. Parking for large parties and other events hosted by the residents shall be planned in advance of activity and shall be considerate of the general appearance and traffic flow of the community. Large parties that may result in vehicles being parked along street right-of-way shall plan for off-site parking.

10. Air Conditioner Units. No window or thru-the-wall A/C units will be permitted. All outside condenser units must be placed in an obscure location and shall be screened with appropriate landscaping.

11. Garage Sales. Garage sales and garage sale signs are not allowed in the community except as organized, community-garage-sale events sponsored by the Association.

12. Satellite TV. Satellite dishes shall not be mounted in view from the main road.

13. Construction Hours. Construction is allowed during the following times:

- A. Monday through Friday from 6:00 a.m. until 6:00 p.m.
  - B. Saturday from 7:00 a.m. until 4:00 p.m.
  - C. Sunday – no construction allowed
14. Walking/hiking trails. Motorized vehicles are not permitted on community walking trails, except for the community maintenance staff as required to maintain the trail system.
15. Lakes. Following rules must be followed:
- A. Guests must be accompanied by a Lot Owner
  - B. No gas powered boats may be used
  - C. Fishing is permitted but catch and release is required except when posted otherwise
  - D. Swimming is not permitted

## **ARTICLE 5**

### **GENERAL**

1. Obligation of Owner to Build.

- A. Each Owner of an unimproved Lot shall commence construction of a residential dwelling in accordance with the requirements herein set forth on or before the expiration of one (1) year from the date of conveyance of such Lot to the Owner, and shall complete the construction of such residential dwelling house on or before the expiration of two (2) years from the commencement of construction, but in no event later than three (3) years from the date of conveyance of said Lot. Deviations from the times specified in Article 5, subparagraph 1A must be approved in writing (via certified letter) by the ARB in response to a written variance request submitted to the ARB at least 180 days prior to expiration of time limit.
- B. In the event a residential dwelling on any Lot within the Property is damaged or destroyed in whole or in part, the Owner shall be obligated to repair or replace said structure within one year from the date of such damage or destruction and such repair and replacement of said structure shall be in accordance with the covenants and restrictions set forth in this Declaration. Further, all debris resulting from such damage or destruction must be removed and the Lot restored to a slightly condition with reasonable promptness, but not later than ninety (90) days after such damage or destruction.

2. Founder's Right to Repurchase.

There shall be no right of assignment or sale by the Purchaser to any other party without first offering the Lot(s) to the Founder. Should Founder decline to purchase, then Owner shall have the right to sell to another party. It is agreed that it is in the best interest of all parties to permit only builders/purchasers access to the Property that would properly perform construction on the Property

which would enhance the overall development and the favorable perception of the Property by the general public.

A. In the event of the occurrence of any of the following:

(1) The Owner of a Lot fails to commence construction of a residential dwelling house on such Lot within one year from the date of conveyance as required in Section 1 (A) of Article 5 above; or

(2) The Owner of a Lot fails to complete construction of a residential dwelling on such Lot within two years from the date of conveyance of said Lot as required in Section 1 (A) of Article 5 above; or

(3) The Owner of a Lot gives written notice to Founder of its desire to sell or otherwise transfer said Lot;

The Founder shall have the right to purchase the Lot from said Owner at a price equal to the price paid by the Owner for said Lot, without interest. The Founder shall exercise its right to so purchase the Lot of the Owner by giving written (certified letter) notice to the Owner at the address furnished to Founder by the Owner within whichever of the following periods if applicable.

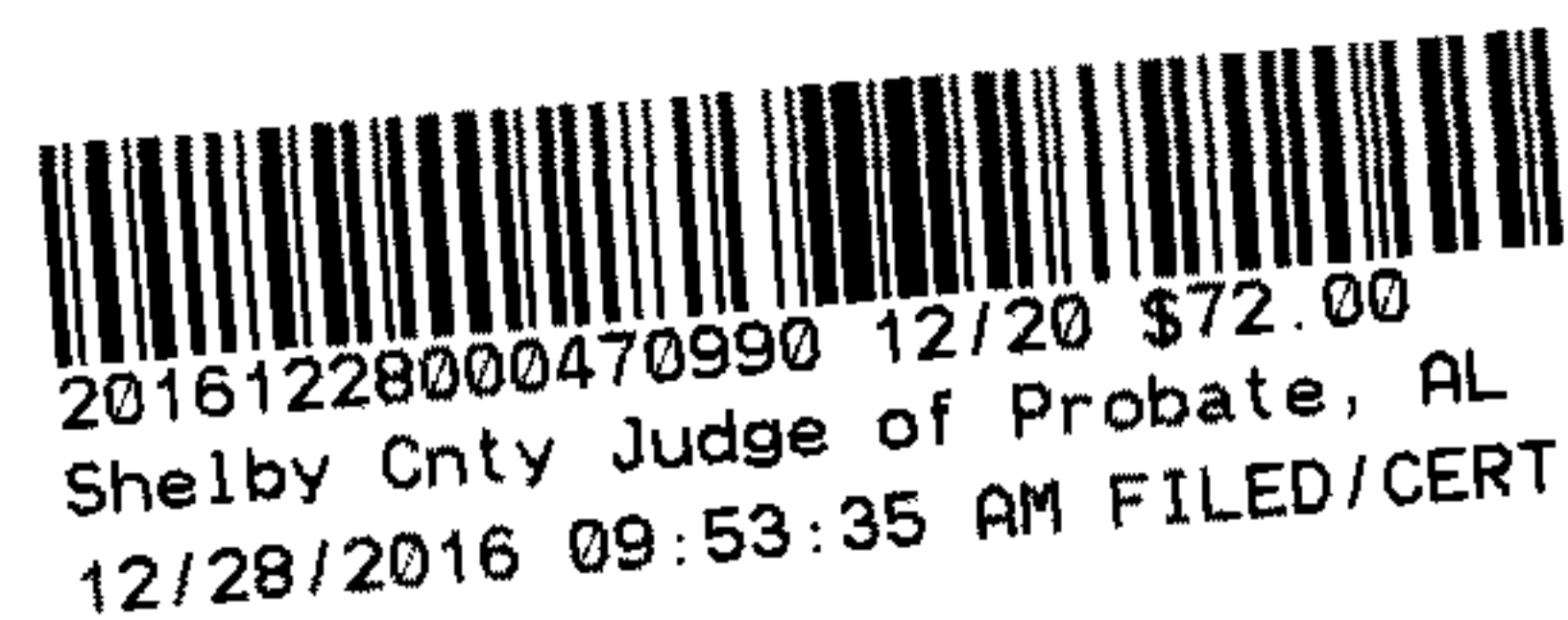
(i) 180 days from the expiration of one (1) year after date of conveyance of the Lot to the Owner in the case of (1) above;

(ii) 180 days from the expiration of three (3) years after date of conveyance of the Lot to the Owner in the case of (2) above;

(iii) 30 days after delivery of written notice to the Founder in the case of (3) above.

B. In the event that the Founder exercises its option to purchase the Lot of an herein provided, the Founder shall be obligated to purchase, and the Owner shall be obligated to sell the Lot on the terms and conditions set forth herein at a closing to be held on or before thirty (30) days after the exercise of the option. At the closing, the Founder shall pay the purchase price in funds immediately available to the Owner and the Owner shall deliver a general warranty deed conveying said Lot to Founder free clear of any liens or encumbrances, less and except those easements, restrictions, and encumbrances (but excluding any mortgage securing indebtedness of Owner) reflected on the deed from Founder to Owner.

C. The right of the Founder to purchase the Lot from an Owner for failure to comply with Section 1 of Article 5 hereof shall be in addition to, and not in limitation of all other rights and remedies available to the Founder for failure to comply with the provisions set forth in this Declaration. While the Founder retains the right to purchase said Lots, the Founder or its agents are not obligated to do the same.



3. Grantee's Acceptance. The grantee of any Lot subject to the coverage of this Declaration, by acceptance of the deed or other instrument conveying an interest in or title to, or the execution of a contract for the purchase thereof, whether from the Founder or a subsequent Owner of such Lot, shall accept such deed or other contract upon and subject to each and all of these restrictions herein contained.
4. Indemnity for Damages. Each and every Lot Owner and future Lot Owner, in accepting a deed or contract for any Lot subject to this declaration, agrees to indemnify Founder for any damage caused by such Owner, to roads, streets, gutters, walkways or other aspects of public ways, including all surfacing thereon, or to water, drainage or storm sewer lined or sanitary sewer lines owned by Founder, or for which Founder has responsibility, at the time of such damage.
5. Severability. Every one of the provisions and restrictions is hereby declared to be independent of, and severable from the rest of the provisions and restrictions and of and from every combination of the provisions and restrictions. Invalidation by any court of any provisions or restrictions in this Declaration shall in no way effect any of the other provisions or restrictions which shall remain in full force and effect.
6. Right of Founder to Modify With Respect To Unsold Lots. With respect to any unsold Lot, Founder may include in any contract or deed hereinafter made or entered into such modifications and/or additions to this Declaration as Founder in its discretion desires.
7. Captions. The captions preceding the various paragraphs and subparagraphs of this Declaration are for the convenience of reference only, and none of them shall be used as an aid to the construction of any provision of this Declaration. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.
8. Effects of Violation on Mortgage Liens. No violation of any kind of this Declaration shall defeat or render invalid the lien of any mortgage made in good faith and for value upon any portion of the Property; provided, however, that any mortgagees' or foreclosure sale shall be bound by and subject to this Declaration as fully as any other Owner of any portion of the Property
9. No Reverter. No restriction herein is intended to be, or shall be construed as a condition subsequent or as creating a possibility of reverter.
10. Duration and Amendment.
  - A. The restrictions contained in this Declaration shall run with and bind the Property, shall inure to the benefit of and shall be enforceable by Founder, the Architectural ARB, and the Owner of any Lot included in the Property, their respective legal representatives, heirs, successors and assigns until December 31, 2026, after

which time said restrictions shall be automatically extended for successive periods of ten years. After December 31, 2026, this Declaration may be or terminated in its entirety by an instrument in recordable form signed by not less than 2/3 of the Lots Owners.

B. This Declaration may only be amended as follows:

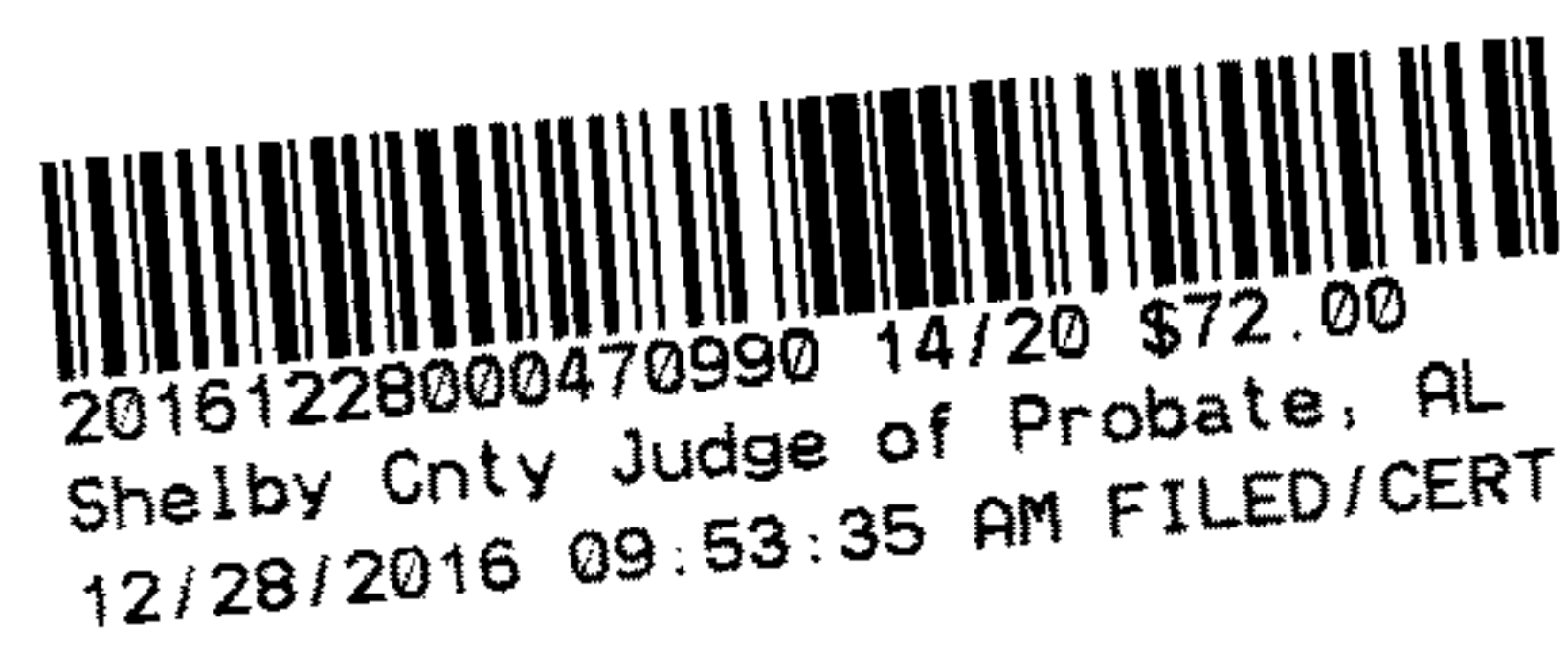
(1) By Members. This Declaration may be amended at any time by an instrument signed by the president or vice president and secretary of the Association, certifying approval in writing by two-thirds of the total votes. Rights reserved to the Founder may not be amended without the specific written consent of the Founder.

(2) By the Founder. The Founder specifically reserves the absolute and unconditional right to amend this Declaration without the consent or joinder of any party (i) to conform to the requirements of the Federal Home Loan Mortgage Corporation, Veterans Administration, Federal National Mortgage Association or any other generally recognized institution involved in the guarantee or purchase and sale of home loan mortgages, (ii) to conform to the requirements of institutional mortgage lenders or title insurance companies, or (iii) to clarify the Declaration's provisions or correct errors.

C. Any amendment or termination of this Declaration shall take effect upon recording of the applicable instrument in the land records of Shelby County, Alabama, or in such other place of recording as may be appropriate at the time of the execution of such instrument.

11. Enforcement. In the event a violation or breach of any of these restrictions or any amendments thereto by any Owner of a Lot, or employee or agent of such Owner, the Owner (s) of Lot (s), Founder, the Association and their successors and assigns, or any party to whose benefit these restrictions inure shall have the right to proceed at law or in equity to compel compliance with the terms and conditions hereof, to prevent the violation or breach of said restrictions, to sue for and recover damages or other dues, or take all such courses of action at the time, or such other legal remedy it may deem appropriate. No delay or failure on the part of an aggrieved party to initiate an available remedy set forth herein shall be held to be a waiver of that party or an estoppel of that party or of any other party or assert any right available to him upon the recurrence of continuance of said violation or the occurrence of a different violation.

Damages shall not be deemed adequate compensation for any breach or violation of any



provision hereof, but any person or entity entitled to enforce any provision hereof shall be entitled specifically to relief either at law or in equity.

Any party to proceeding who succeeds in enforcing a restriction or enjoining the violation or a restriction against a Lot Owner may be awarded a reasonable attorney's fee against such Lot Owner.

12. No Waiver. The failure to any party entitled to enforce any of these restrictions herein contained shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to such a violation or breach occurring prior or subsequent thereto; provided, however, that approval of plans pursuant to Article III shall be binding on any and all parties as a conclusive determination that such plans are in conformity with these restrictions.

13. Founder's Exemption as to Article 4, subparagraph 2, Signs. Nothing contained herein shall be construed to prevent the erection or maintenance by Founder or its duly authorized agents of structure, improvements or signs necessary or convenient to the development, sale, operation or other disposition of the Lots.

14. Alabama Gas Company Liquidated Damages Clause. For having made available Natural Gas in The Highlands Community, Alagasco requires each house to use natural gas as the exclusive source for heating (no piggyback units), water heating, and cooking. Should the Owner choose not to follow the mandatory gas equipment requirements in a home, there will be a liquidated damage charge of \$3,557 due to Alagasco at closing.

15. Sanitary Sewer Service Agreement. Owner(s) will be required to sign a Sanitary Sewer Service Agreement with Double Oak Water Reclamation, LLC for sewer service.

## **ARTICLE 6.**

### **COMMON PROPERTY**

#### **1. Common Property.**

“Association Property” or “Common Area” or “Common Property” shall mean and refer to all real property (including any improvements thereon and appurtenances thereto) owned by or conveyed to the Association for the common use and enjoyment of the Owners of the Lots in the Property, and any additional property that may be added thereto as provided for herein. Without limiting the foregoing description, Association Property, Common Area or Common Property shall include the following and the Association (as defined in Article 7 below) shall be responsible for the maintenance thereof, except to the extent set forth below:

A. The public and private street(s) within the Property.

B. All installations for the furnishing of electricity, telephone, natural gas, sanitary sewer, water service, water tower, and television cable not immediately appurtenant to any dwelling house.

- C. All outdoor and exterior lighting not situated within the boundaries of any Lot.
  - D. Landscaping, trees and walkways not situated within the boundaries of any Lot.
  - E. Any landscaped areas at Common Area facilities and structures. Each individual Lot Owner will be responsible for the interior side of landscape should Association Property be adjacent to their Lot.
  - F. All storm sewers anywhere situated on the non-private portions of the Property.
  - G. Recreational area and associated facilities such walking trails, lakes, pavilions, pedestrian tunnels, constructed waterfalls, community pool and buildings.
  - H. Any and all other property deeded to the Association by Founder or said Association.
2. Restrictions and Easements over Common Areas. Founder will create, either prior to or as a part of any conveyance of the Common Areas to the Association, easements and rights-of-way over or affecting the Common Areas, including, but not limited to, easements relating to utilities, sewers, drainage, construction and roads. Any such conveyance to the Association by Founder shall be subject to all restrictions, reservations, easements, rights of way and agreements of record. In addition, the Association shall have the right to grant easements, rights-of-way leases, licenses or concessions to, over, under, through or across all or any part of the Common Areas.

## ARTICLE 7

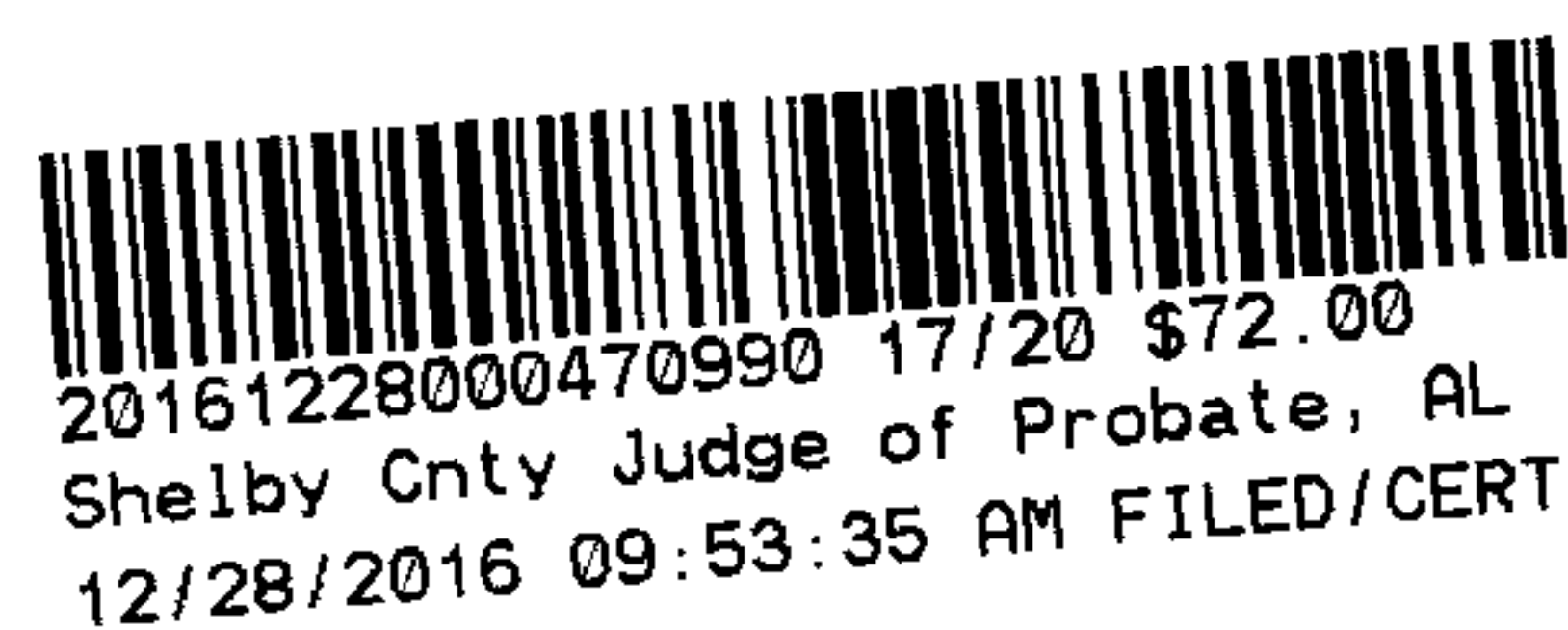
### ASSOCIATION

1. Establishment. The Founder shall form The Highlands Community Homeowners Association, Inc., an Alabama nonprofit corporation (herein called the "Association"), for the purposes of maintain the Association Property and enforcing all rights of the Association with respect to the Property.
2. Right to Use. Every Lot Owner shall have a right and easement of enjoyment in and to the Association Property which shall be appurtenant to pass with the title to each Lot, subject to the following:
  - A. The right of the Association to suspend the voting rights and right to use of the Association Property by any Owner for any period during which any assessment against such Owner's Lot remains unpaid, and for a period not to exceed thirty (30) days for the violation of any rule or regulation respecting the right to use the Association Property which may be now or hereinafter adopted by the Association.
  - B. Such other reasonable rules and regulations respecting the use and enjoyment of the Association Property as may be adopted by this Association.
3. Membership and Voting Rights. Subject to the terms of the Articles of Incorporation and the

Bylaws of the Association, every Owner of a Lot which is subject to assessment as hereinafter provided, shall be a member of the Association. Membership shall be appurtenant to and may not be separated from the ownership which is subject to assessment. The Owners of each Lot shall be entitled to one vote for such Lot as provided in the Articles of Incorporation. Founder shall retain one vote for each Lot still unsold. In the event more than one person holds an interest in any Lot, all such persons shall be members of the Association; provided, however, that the one vote for such Lot shall not be increased, and the members must determine among themselves how the Lot's vote may be exercised and shall notify the Association of the natural person who shall exercise their vote at such time as required by the Board (as defined below). Corporations, partnerships, trusts and other entities shall notify the Association of the natural person who shall be considered a member of the Association and entitled to exercise its vote at such time as required by the Board (as defined below).

4. Assessments.

- A. The Founder, for each Lot owned within the subdivision of The Highlands, hereby covenants and each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments of charges, and (ii) special assessments for capital improvements and extraordinary expenses, such assessments to be established and collocated as hereinafter provided. The annual and special assessments, together with interest, costs and responsible attorney's fees, shall be made, and shall further be a personal obligation of the person or persons who were the Owner or Owners of such Lot at the time such assessments were made. The personal obligation is for delinquent assessment and shall not pass to the successor in title of any Lot Owner unless expressly assumed by such successor.
- B. The assessment levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Lot Owners and for the purposes of the Association as set out in the Articles of Incorporation. The Association shall be authorized to adopt rules regarding the payment of reasonable costs associated with the preparation and circulation of all assessments.
- C. In addition to the annual assessments authorized herein, the Association may impose in any assessment year a special assessment application to that year, for the purpose of defraying, in whole or in part, the costs of any construction, reconstruction, repair, or replacement of a capital improvement upon the Association Property, provided that any such assessment shall first have been approved and assented to by two-thirds (2/3) of the votes of the membership which is entitled to vote at the time, in person or by proxy, at any regular or special meeting called for the



purpose of voting on such assent and approval, in accordance with the terms of the Articles of Incorporation of the Association and the Bylaws thereof.

- D. Both annual and special assessments must be fixed at a uniform rate for all Lots and must be collected on a monthly basis.
- E. The annual assessments provided for herein shall commence as to all Lots at time of closing. The Board of Directors (the "Board") of the Association shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment and shall prepare and submit to the Members a budget in connection therewith in accordance with the Bylaws of the Association. Written (first class letter) notice of the annual assessment shall be sent to every Owner subject thereto, and the due dates thereof shall be established by the Board. The Association shall, upon demand for a reasonable fee or charge, furnish a certificate signed by an officer of the Association, setting forth whether the assessments on a specified Lot have been paid or the amount due thereon at any given time. Any such certificate, when properly executed by an officer of the Association as to the status of or amounts of the assessments on a Lot, shall be binding upon the Association as of the date of the issuance of such certificate.
- F. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at a rate of eight percent (8%) per annum. The Association may bring an action at law against any Owner personally obligated to pay the same or may foreclose such lien by the commencement of a civil action. No Lot Owner may waive or otherwise avoid or escape liability for the assessment provided herein by non-use of the Association Property or abandonment of such Owner's Lot.
- G. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Any conveyance, whether voluntarily, involuntarily, or by operation of law, shall not affect the lien of the assessments, provided, however, the sale or transfer of any Lot pursuant to mortgage foreclosure or any judicial proceeding in lieu thereof, shall extinguish the lien of such assessments as to any assessment or part thereof which became due prior to such sale or transfer. In any event, no sale or transfer will relieve any Lot Owner from personal liability or for any assessments becoming due to such sale or transfer.
- H. The assessments mentioned herein shall cover the following:
  - 1. Any electrical cost to run all common lighting and any other electrical device necessary to the Association Property;
  - 2. Operation
  - 3. and maintenance of community pool and associated facilities;

4. Garbage pickup and disposal service;
5. Maintenance of the private road system;
6. Gas bills of the Association to run any Common Area gas lamps and equipment;
7. Water bills on the Association Property;
8. Maintenance of the entry gates, structures, walls, community and street signage;
9. Any common insurance required;
10. All landscape maintenance in the Common Areas and also the upkeep and maintenance of the grass and planted areas situated in the entry areas to common community spaces and structures. This will include basic grass cutting, weeding, edging, leaf/debris removal, maintenance of irrigation system, gutter cleaning, pesticide and fertilization, or any other special treatments associated. Areas include but are not limited to landscaped Common Areas around community pool, structures, gates, signage, walk-paths, and up to the common road.
11. Any management fees, accounting fees and legal expenses incurred by the Association;
12. Such other matters which involve use of Common Areas as determined by the Association.
13. All common storm drainage collection inlets, pipes, underground reservoirs, headwalls, outlet protections and open ditches.

## **ARTICLE 8**


### **ROAD OWNERSHIP/MAINTENANCE**

Neither Shelby County nor Pelham will maintain the road or sewer system within the Property, however, if in the future Shelby County takes deeded ownership of said common roads then the Association will no longer be burdened with the responsibility of upkeep. If, in the future, Shelby County takes ownership, then the Association will be the liaison for the affairs of said common roads.

## **ARTICLE 9**

### **IRREVOCABLE COVENANTS**

Each Owner, by acceptance of a deed to any Lot, and each mortgagee by acceptance of a mortgage encumbering any Lot, agrees that the Lots are subject to this Declaration and that, until the end of the Development Period (as defined in the Articles of Incorporation for the Association), the Founder shall have the sole and exclusive right and authority to (a) appoint and remove all members of the Board and (b) and that any rights reserved hereunder to Founder may not be amended without the written consent of the Founder.


  
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Shelby Cnty Judge of Probate, AL  
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IN WITNESS WHEREOF, the Founder has caused this Declaration to be executed as of the  
28 day of DECEMBER 2016.

Founder:

**TWO MOUNTAINS, LLC**

By William David Brogdon  
William David Brogdon  
Member

  
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Shelby Cnty Judge of Probate, AL  
12/28/2016 09:53:35 AM FILED/CERT