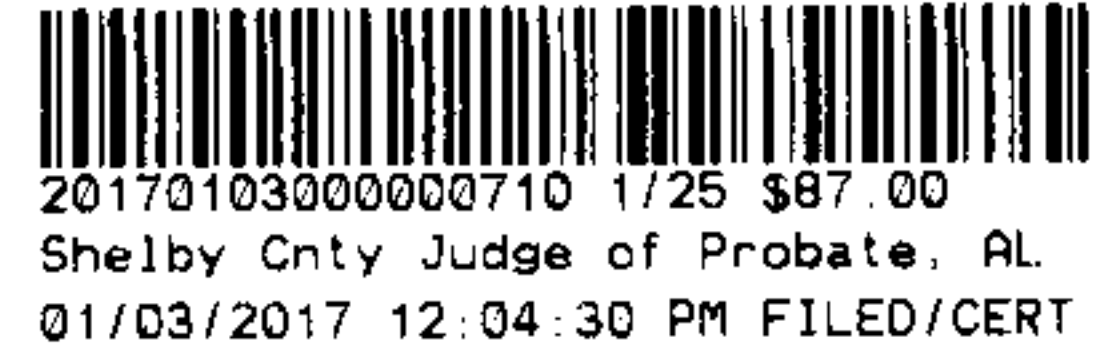


DECLARATION OF PROTECTIVE COVENANTS FOR  
GLEN IRIS AT KILKERRAN, PHASE III, SECTOR 2

AS RECORDED IN MAP BOOK 47, PAGE 21, IN THE  
PROBATE OFFICE OF SHELBY COUNTY, ALABAMA

STATE OF ALABAMA)  
COUNTY OF SHELBY)



KNOW ALL MEN BY THESE PRESENTS THAT:

WHEREAS, the undersigned Mobley Development, Inc., an Alabama corporation (which, together with its successors and assigns, is hereinafter referred to as "Developer"), is the owner of all of that certain real property situated in Shelby County, Alabama, which is more particularly described as **Glen Iris at Kilkerran, Phase III, Sector 2** (the "Property"). All lots shown on the subdivision plat (the "Subdivision Plat") for the Property are hereinafter referred to individually as a "Lot" and collectively as "Lots." The Property is part of a mixed-use development planned by Developer for all of the real property described in Exhibit "A" attached hereto and incorporated herein by reference. As used in these Protective Covenants, the term "Development" shall mean and refer to any of the real property described in Exhibit "A" which is or may be developed by Developer for "Residential Lots," as hereinafter defined. THESE PROTECTIVE COVENANTS ARE APPLICABLE ONLY TO THE PROPERTY AND SHALL NOT EXTEND TO OR BE BINDING UPON ANY OTHER PORTIONS OF THE DEVELOPMENT OR ANY OF THE OTHER REAL PROPERTY DESCRIBED IN EXHIBIT "A" ATTACHED HERETO.

WHEREAS, the Developer desires to subject all of the Property and each Lot located therein to the easements, covenants, conditions, assessments, limitations and restrictions hereinafter set forth.

NOW, THEREFORE, Developer does hereby expressly adopt the covenants and limitations for the Property as set forth in these Protective Covenants and does hereby declare that the Property and each Lot located within the Property shall be and the same are hereby subject to the following easements, covenants, conditions, assessments, limitations and restrictions.

**ARTICLE 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 the prior written approval of Developer.

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, or

forty (40) feet in height, and a private garage, and other outbuildings incidental to and necessary for proper residential use of the Lot. No mobile home or modular housing is allowed. Separate garage buildings are permitted. 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 VII and 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:

Front: Fifteen (15) feet from dedicated road right-of-way

Rear: Forty (40) feet from the rear lot line

Side: One side shall be set at a minimum of three (3) feet from the wall to the side line and the side line restriction of the adjoining lot shall be seven (7) feet from the wall to the side line in order to provide a minimum distance of ten (10) feet from wall to wall on adjoining lots.

The Committee reserves and shall have the right to grant variances to the foregoing setback requirements. Each house design will be approved on an individual basis by the Committee. The Committee shall have an objective to present a Traditional Architectural Environment for the Property. Accordingly, the Committee shall be directed to encourage the development of traditionally designed homes and the Committee is directed to discourage contemporary exterior designs. No structure (other than the 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 buildings 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 two thousand five hundred (2,500) square feet of living area. Square footage measurements shall include only the living (heated and cooled) areas of a dwelling but shall not include porches, garages, unfinished basements or decks. All dwellings will have wooden, vinyl clad, solid vinyl or aluminum clad windows. All exteriors will be brick, siding or stacked stone or an approved combination thereof on all four sides. Gables, cantilevers, chimney chases, dormers and second floor walls above roof lines may be wood, vinyl or composite siding, all subject to the approval of the Committee. Notwithstanding anything contained herein to the contrary, Lots 2044, 2045, 2046, 2047, 2048, 2049, & 2050 shall have brick or stone on all four sides unless otherwise approved by the ARC in writing.

1.06 The entrance ways to the Development, all areas on the recorded Subdivision Plat

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, parks and play areas within the Development, shall be, for the purpose of maintenance and upkeep, considered common area (collectively, the "Common Area"), and shall be maintained by the Ballantrae Residential Association, Inc. (the "Association") as hereinafter provided.

## **ARTICLE 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 assigns, is hereinafter 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 decrease the beauty of the specific area or of the neighborhood as a whole. Any and all dwellings, buildings, structures and other improvements of any nature to any Lot must be approved by the Committee.

2.02 No refuse pile or unsightly object shall be allowed to be placed or suffered to remain upon any part of any Lot or the Property, including vacant lots or Common Area. 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 in 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 or Common Area, 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. No household pets shall be permitted to run at large and shall be kept on a leash at all times when they are allowed off of their Owner's property. The Association shall have the right to remove any such animals that are prohibited and the cost of such removal shall be an expense of the Association.

2.04 No noxious or offensive trade or activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood or its other 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. Trash, garbage or other waste shall not 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 and shall be so placed or screened by shrubbery or other appropriate material approved in writing by the Committee as not to be visible from any road or the "Golf Course," as defined in Article VIII below, at any time except during refuse collection. 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 with approval of 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 either temporarily or permanently or otherwise 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 and a Certificate of Occupancy for such dwelling has been issued by the appropriate 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 twelve (12) months.

2.10 Installation of a natural-gas fueled standby power generator ("Generator") must be approved by the Committee. Approval will be given only if (1) the Generator is located at the rear of the dwelling and screened from view from public streets; (2) the Generator is enclosed in a sound-reducing enclosure that allows no more noise emission than the outside air conditioning unit; and (3) the Generator will be used only during power failures and will be "exercised" only on weekend days (Saturday and Sunday) between the hours of 10:00 a.m. and 3:00 p.m. No diesel powered generators will be allowed.

2.11 Outside air conditioning units may not be located in the front yard or within any side yard adjacent to any street on 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. No window air conditioning units shall be permitted at any time.

2.12 Wooden, vinyl clad, solid vinyl or aluminum clad windows will be used exclusively

on the sides, fronts, and rears of all dwellings constructed.

2.13 No concrete block work, including foundations, concrete block steps, walkways, walls or any other concrete block work, whether painted or otherwise, shall show above ground or from the exterior of any dwelling.

2.14 Except as set out in Section 1.05 above, no siding shall be used on the construction of any dwelling, except as approved by the Committee. 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 Fencing may not be utilized on any Lot without prior written approval of the same by the Committee. The Committee shall have the right, in its sole and absolute discretion, to determine the location, style, materials, and landscaping utilized on or in conjunction with any fencing that is approved.

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 or Common Area, except during initial construction of a dwelling on a Lot.

2.18 No satellite, 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 within the Property or the "Golf Course," as hereinafter defined.

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 recommendations 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 will be landscaped with sod and other landscaping approved by the Committee. The rear yard may be seeded or sprigged.

2.21 The roof pitch on any dwelling shall not be less than 9 in 12 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. All roofing materials and colors shall be approved by the Committee. No solar or other energy collection device 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 ridge of any dwelling except for approved chimneys, exhaust fans 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 on the front and/or the side of the dwelling shall be supported by the foundation of the dwelling.

2.24 All driveways must be of a concrete finish or other suitable style and materials approved by the Committee.

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 a 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 The intent of Developer is to preserve for present and future Owners a heavily-wooded physical environment in which a maximum amount of existing vegetation is preserved in an undisturbed state, typical of an oak-hickory forest, and each Owner is hereby required to replace dying, diseased or absent trees in order to maintain a desired degree of tree coverage. All Lots shall be landscaped in accordance with standards established by the Committee and in compliance with the City of Pelham landscaping ordinance. 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 or the Committee (after ten (10) days written notice) and will be charged to the Owner of such Lot at 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. 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 or any



Common Area.

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 in close proximity with the Property.

2.31 To insure the maintenance of the natural beauty, no Owner shall be allowed to dam up the creeks which flow through said Property nor shall any Owner change the flow of said creek or any wet weather streams.

2.32 Motorized vehicular traffic of any type is strictly prohibited on any Common Area except as may be required by the Developer or the Association for maintenance or construction.

2.33 Wood piles shall be located only at the rear of a dwelling and should be screened from view from public streets and adjacent Lots. Children's toys, swing sets, jungle gyms, trampolines and other outdoor recreational equipment and appurtenances shall be allowed only at the rear or behind a dwelling and shall be located so as not to be visible from any public street. Portable basketball goals shall be allowed in the driveway or parking area with approval from the Committee. Free-standing 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, bird baths, 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 any public street. Statues, water fountains, bird baths, bird feeders, wood carvings, plaques and other home crafts shall be allowed only at the rear of a dwelling and should not be visible from any 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 lights, pumpkins, Thanksgiving decorations) shall be promptly removed from any Lot or dwelling within thirty (30) days following such holiday.

**ARTICLE III**  
**BALLANTRAE**  
**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 of the Committee or the Association. At such time as Developer no longer owns any Lot within the Property or upon 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, landscaping, 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 any construction is commenced on such Lot. The Committee shall have the authority to require modifications and changes in plans and specifications if it deems the same necessary.

3.03 Except as hereinafter provided, the affirmative vote of a majority of the membership of the Committee shall be required in order to adopt or promulgate any rule or regulation, or to make any findings, determinations, ruling or order, or to issue any permit, authorization or approval pursuant to directives or authorizations contained herein. With regard to review of plans and specifications as set forth in this Article III, however, and with regard to all other specific matters (other than the promulgation of rules and regulations) as may be specified by resolution of the entire Committee, each individual member of the Committee shall be authorized to exercise the full authority granted herein to the Committee. Any approval by one such member of any plans and specifications submitted under this Article III, or the granting of any approval, permit or authorization by one such member in accordance with the terms hereof, shall be final and binding. Any disapproval or approval based upon modification or specified conditions by one such member shall also be final and binding, provided, however, that in any such case, any applicant for such approval, permit or authorization may, within ten (10) days after receipt of notice of such adverse decision, file a written request to have the matter in question reviewed by the entire Committee. Upon the filing of any such request, the matter with respect to which such request was filed shall be submitted to and reviewed as soon as possible by the entire Committee. Thereafter, the decision of a majority of the members of the Committee with respect to such matter shall be final and binding.

3.04 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 the 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 therefor. 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.

3.05 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. 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.



3.06 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 foregoing 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 OF THEIR RESPECTIVE AGENTS, OFFICERS, DIRECTORS, MEMBERS AND SUCCESSORS AND ASSIGNS, FROM ANY LIABILITY OF ANY NATURE WHATSOEVER ARISING FROM DAMAGE, LOSS OR EXPENSE SUFFERED, CLAIMED, 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.**

3.07 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 the objectives and purposes of the Protective Covenants, including, without limitation, 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 location of any proposed improvements on any Lot, objection to the 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 approve similar plans, specifications or data for any other dwelling to be constructed on any Lot within the Property.

**3.08 THE PROPERTY MAY BE LOCATED IN AN AREA WHICH INCLUDES UNDERGROUND MINES, TUNNELS, SINKHOLES AND SUBSURFACE CONDITIONS. THE APPROVAL OF PLANS AND SPECIFICATIONS BY THE COMMITTEE SHALL NOT BE CONSTRUED IN ANY RESPECT AS A REPRESENTATION OR WARRANTY BY THE COMMITTEE OR DEVELOPER TO ANY OWNER THAT THE SURFACE OR SUBSURFACE CONDITIONS OF ANY LOT ARE SUITABLE FOR THE CONSTRUCTION OF A DWELLING OR OTHER STRUCTURES THEREON. IT SHALL BE THE SOLE RESPONSIBILITY OF EACH OWNER TO DETERMINE THE SUITABILITY AND ADEQUACY OF THE SURFACE AND THE SUBSURFACE CONDITIONS OF THE LOT. NEITHER DEVELOPER NOR**

**THE COMMITTEE SHALL BE LIABLE OR RESPONSIBLE FOR ANY DAMAGE OR INJURY SUFFERED OR INCURRED BY OWNER OR ANY OTHER PERSON AS A RESULT OF SURFACE OR SUBSURFACE CONDITIONS AFFECTING A LOT OR ANY PORTION THEREOF, INCLUDING, WITHOUT LIMITATION, ANY SURFACE OR SUBSURFACE DRAINAGE OR UNDERGROUND MINES, TUNNELS, SINKHOLES OR OTHER CONDITIONS OR TYPES OF GROUND SUBSIDENCE OCCURRING ON OR UNDER ANY LOT.**

3.09 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 with any dwelling or other improvements on any Lot.

3.10 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 a member of the Committee.

3.11 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 (1) 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.

#### **ARTICLE IV**

#### **BALLANTRAE RESIDENTIAL ASSOCIATION, INC.**

4.01 Every Owner of a Lot within the Property is subject to assessments, as hereinafter provided, and shall be a member of the Ballantrae Residential Association, Inc. (the Articles of Incorporation for which are recorded in the Probate Office of Shelby County, Alabama) (the "Association"). Membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot, and Members 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 Lots," as hereinafter defined, shall be members of the Association and, subject to the rights reserved by Developer in the Articles of Incorporation and ByLaws of the Association, shall be entitled to one (1) vote for each Residential Lot owned. When more than one (1) person holds an 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 one (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 so 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 Articles of Incorporation 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 interests 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 of the Lots within the Property or any real properties situated adjacent to or in close proximity with the Development.


## **ARTICLE V**

### **COVENANT FOR ASSESSMENTS**

5.01 Each Owner of a Lot within the Property, by acceptance of a deed to such Lot, agrees to pay to the Association: (i) 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 any 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, costs and reasonable attorney's fees, shall also be a charge on each Lot and shall be a continuing lien upon each Lot against which 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, and 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 the provisions 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 of same. The Association is solely responsible for and shall assume all maintenance responsibilities with respect to all Common Area within the Property.

  
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5.04 (a) The annual assessment for the Property shall commence on January 1 of each year, and shall be paid in advance. The annual assessment shall be established by the Association in accordance with its rules, regulations and ByLaws. The foregoing shall not limit or restrict any special Assessments levied pursuant to Section 5.05 below (with the approval of a majority of the Owners as provided therein) or any individual Assessments levied in accordance with the provisions of Section 5.01 above. Lots owned by the Developer shall not be subject to any assessment by the Association, be it annual, special or individual. Notwithstanding anything contained herein to the contrary, the annual assessment shall not be due or accrue until the sale of a Residential Lot with a completed house to the initial owner.

(b) Commencing with the fiscal year of the Association which begins on January 1 (i.e., from January 1 through December 31, which period is hereinafter referred to as the "Base Year") and annually thereafter, the Board of the Association shall determine and approve annually an annual budget covering the estimated Common Expenses for the Property for the upcoming year, such budget to include a capital contribution or reserve account if necessary for the capital needs of the Association. The amount set forth in such budget shall constitute the aggregate amount of annual assessments for the then applicable year.

(c) Notwithstanding anything contained herein to the contrary, until the occurrence of the "Turnover Date" as defined in the ByLaws of the Ballantrae Residential Association, Inc., the annual assessments shall be established and set by the Board of Directors of the Association.

5.05 In addition to the annual assessments, the Association may levy, in any assessment year, a special assessment, applicable to that year only for the purpose of 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 percent (51%) of the Owners who are voting in person or by proxy, excluding votes which may be cast by the Developer, whether voted in person or by proxy, at a meeting duly called for this purpose, and (b) for so 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 percent (51%) or more of all 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 for each "Residential Lot," as hereinafter defined. As used herein, the term "Residential Lot" or "Residential Lots" shall mean and refer to any real property within the Development which has been developed for single-family residential purposes, including, without limitation, attached or detached residential 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 Articles of Incorporation and 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 conveyed by the Developer and shall be due and 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 against each Lot at least thirty (30) days in advance of each 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 due 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 of the Association setting forth whether the assessment on a Lot has been paid. A properly executed certification of the Association as to 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 a 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 assessments 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 assessments or other amounts due to the Association are not paid by any Owner when the same comes due, then, in addition to all other rights 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 costs 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 maintaining 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 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 a 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 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 in 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 personally for the collection of all amounts due from 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 be granted a waiver or otherwise be exempt from the liability to pay the 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 on a Lot; provided, however, that the sale or transfer of any Lot pursuant to first 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 rights and remedies set forth above, if any Owner (or his contractor, family members, guests or invitees) shall violate or attempt to violate any of the covenants and restrictions set forth herein, then Developer, the Association or the Committee, jointly and severally, 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 proceeding in equity against such Owner to enjoin such violation; provided, however, that the rights 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 severally, shall be entitled to recover all costs and expenses, including reasonable attorneys' fees, incurred by any of them in such proceedings, 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 construed as a waiver of any right of action contained herein for past or future violations of said covenants and restrictions.

## **ARTICLE VI** **EASEMENTS**

  
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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 actions 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 non-exclusive easement over, across, through, upon and under those portions of any Lot upon which the 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 sewers, 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 non-exclusive easement over, across, through, upon and under all portions of the Common Area for the purpose of installing, 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 assigns.

## **ARTICLE VII** **LAKE LOTS**

7.01 Developer contemplates that portions of the Development may include lakes and water areas. The use of lakes and water areas shall be subject to such rules and regulations which may be adopted and amended from time to time by the Association. Such restrictions may prohibit or limit the type of boating and other recreational activities in or upon such lake areas and may require that any improvements on or adjacent to such lake areas be approved by the Committee.

**7.02 Reservation of Easement with Respect to Waterfront Lots. A 25 (twenty-five) foot natural, undisturbed buffer area, free from any Improvements of any nature shall remain and at all times be maintained on that portion of any Lot or Dwelling which abuts and is contiguous to any lakes or other water features within the Property. Developer does hereby establish and reserve for itself, the Association and their respective agents, employees, successors and assigns, a permanent and perpetual right and easement to enter upon any portion of any Lot or Dwelling lying within thirty (30) feet of any lakes or other water features which abut or are contiguous to any such Lot or Dwelling for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds, stumps or other unsightly growth and removing trash therefrom so as to maintain reasonable**

standards of health, fire, safety and appearance within the Property; provided, however, that the reservation of the foregoing easements shall not impose any duty or obligation upon Developer, the ARC or the Association to perform any of the foregoing action.

**7.03 Waterfront Lots and Recreational Areas**

(a) The Owner of each Lot or Dwelling which abuts or is contiguous to any lakes or other water features within the Property shall at all times maintain all such lakefront or waterfront areas of such Owner's Lot or Dwelling in a safe and attractive condition.

(b) Owners and Occupants of any Lot or Dwelling situated adjacent to all waterfront areas within the Property, as well as their respective family members, guests, agents and invitees, shall refrain from any actions or activities which would interfere with the use of such lakes, waterfront areas and water features by other Owners and Occupants, as determined by the ARC, in its sole discretion. Such prohibited activities shall include, without limitation, burning materials where the smoke would interfere with the reasonable use and enjoyment of any such lakes and water features, maintenance of dogs or other pets which interfere with the use of such lakes or water features due to loud barking or odors, playing of loud radios, televisions, stereos, or musical instruments or allowing trash, rubbish, weeds or undergrowth to remain or grow on any Lot or Dwelling which is unsightly, as determined by the ARC, in its sole discretion.

(c) In addition to the easements and rights established and reserved above by Developer, Developer does hereby establish and reserve for itself and the Association and their respective successors and assigns a permanent and perpetual easement appurtenant over, across, through and upon a strip of land twenty (20) feet in width lying parallel to and running along the common boundaries of any Lot or Dwelling lying directly adjacent to and contiguous with any lakes or water features within the Property, which easement shall allow and be used for the flow and drainage of surface water accumulating in, upon or as a result of the construction and maintenance of any such lakes or water features on or within the Property and to otherwise allow for the rise and fall of the water level of such lakes or water features.

(d) The use of any lakes or water features within the Property by any Owners or Occupants are provided without lifeguards or other supervisory personnel and neither the Association nor Developer will provide any such lifeguards or supervisory personnel in connection with the utilization of such lakes or water features by any person.

(e) The Owner of each Lot or Dwelling, for himself or herself and any Occupant of such Lot or Dwelling and their respective heirs, executors, personal representatives, administrators, successors and assigns, by acceptance of a deed to such Lot or Dwelling, and each Mortgagee, by acceptance of a Mortgage encumbering any such Lot or Dwelling, for themselves and their respective successors and assigns, do hereby:

(i) Irrevocably and unconditionally waive, release and forever discharge Developer, the ARC, the Association and each Governmental Authority and




their respective officers, directors, members, managers, partners, agents, representatives, successors and assigns, of and from any and all actions, causes of action, claims, demands, agreements, covenants, suits, obligations, controversies, accounts, damages, costs, expenses, losses and liabilities of every kind or nature, known or unknown, arising out of or on account of: (1) any loss, damage or injury to person or property, including death, as a result of any entry onto any lakes or water features by any such Owner, Occupant, Mortgagee or any of their respective family members, guests, invitees, heirs, executors, personal representatives, administrators, successors and assigns; and (2) the rise and fall of the water level of any lake or water feature, including, without limitation, the flow of water onto and out of such lakes or water features which could result in or cause damage, by flooding or otherwise, to any Improvements or any other personal property situated on any portion of such Lot or Dwelling, or which would result in or cause any Improvements situated on or adjacent to any such lakes or water features to be unusable due to low or high water levels; and

(ii) Acknowledge and agree that: (1) neither Developer, the ARC, the Association, any Governmental Authority nor any of their respective agents, employees, representatives, successors and assigns, shall provide any lifeguard or any other supervisory personnel or assistance in the conduct of any activities on or about any such lakes or water features; (2) the use of any such lakes or water features by any such Owner or Occupant or any of their respective family members, guests, invitees or heirs, executors, personal representatives, administrators, successors and assigns, shall be at the sole risk and expense of the person or entity using such lakes or water features; (3) neither Developer, the Association, the ARC, any Governmental Authority nor any of their respective agents, employees, representatives, successors or assigns, shall be obligated to take any action to maintain a specific water level for any such lakes or water features on, within or adjacent to the Property; and (4) any lakes and water features on, within or adjacent to the Property, as with any other body of water, pose a potential threat of life threatening harm and each Owner or Occupant and their respective family members, guests and invitees should exercise utmost care and safety precautions in and around any such lakes or water features.

7.04 The City of Pelham (and/or its successors and assigns) is the owner of all lakes located within the golf course property. The use of and access to the lakes owned by the City of Pelham shall be governed by the laws, ordinances and/or rules and regulations established by the City of Pelham. Developer does not make any representations of any nature or kind with respect to the use and/or access to said lakes.

**ARTICLE VIII**  
**GOLF COURSE PROPERTY**

  
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8.01. **Buffer Area.** The term “Buffer Area” shall mean, with respect to each Golf Course Lot, an area twenty-five (25) feet in width running along any portion of such Golf Course Lot which abuts the Golf Course.

8.02. **Golf Course Lot.** The term “Golf Course Lot” shall mean and refer to any Lot which abuts any portion of the Golf Property.

8.03. **Golf Property.** The term “Golf Property” shall mean and refer to that certain real property described in that certain deed executed in favor of The City of Pelham, Alabama which will be recorded in the Probate Office, as the same may be amended from time to time. The Golf Property may contain an 18-hole golf course, golf driving range, putting greens, golf cart paths, tennis courts, swimming pools, clubhouses, locker rooms, tennis and golf pro shops, food and beverage facilities, maintenance areas, buildings and any other related facilities or amenities. THE GOLF PROPERTY IS NOT PART OF THE COMMON AREAS NOR IS IT TO BE GOVERNED BY ANY OF THE TERMS AND PROVISIONS OF THIS DECLARATION EXCEPT FOR THE RIGHTS GRANTED HEREIN TO THE GOLF PROPERTY OWNER AND THE GOLF PROPERTY. NO OWNER OR OCCUPANT, NOR THE ASSOCIATION, SHALL HAVE ANY RIGHT IN AND TO, OR ANY OBLIGATIONS WITH RESPECT TO, THE GOLF PROPERTY BY VIRTUE OF THIS DECLARATION OR BY VIRTUE OF OWNERSHIP OR OCCUPANCY OF ANY LOT OR DWELLING. OWNERSHIP OF ANY PORTION OF THE PROPERTY OR ANY LOT OR DWELLING SHALL NOT ENTITLE ANY SUCH OWNER TO ANY RIGHTS IN OR TO OR THE USE OF ANY OF THE IMPROVEMENTS CONSTITUTING ANY PART OF THE GOLF PROPERTY. NO OWNER OR OCCUPANT SHALL ENTER ONTO THE GOLF PROPERTY UNLESS SUCH OWNER OR OCCUPANT HAS OBTAINED THE PRIOR WRITTEN CONSENT OF GOLF PROPERTY OWNER. The boundaries of the Golf Property are subject to change from time to time. Golf Property Owner may, in its sole and absolute discretion, construct, erect, install, place, operate, maintain, repair and replace on the Golf Property any of the improvements described in this Section 8.03 without requirement that the consent of any Owner or Mortgagee or the Association be obtained. **Notwithstanding anything provided herein to the contrary, Developer does not make and has not made any representations or warranties, either express or implied, concerning whether any improvements will be made to the Golf Property, whether the Golf Property will be operated as either a public or private golf facility, or as to any matters concerning the construction, operation or use of any improvements on the Golf Property or whether such improvements, if constructed, will be operated for golfing purposes for any specified time period.**

8.04 **Golf Property Owner.** The term “Golf Property Owner” shall mean and refer to the owner of the Golf Property and its successors and assigns.

8.05 **Improvement.** The term “Improvement,” with an initial capital letter, shall mean and refer to all Dwellings and any building, structure or device constructed, erected or placed upon any Lot or Dwelling which in any way affects, alters or causes a change in the exterior appearance of any Lot or Dwelling. Improvements shall include, by way of illustration and not limitation, buildings, sheds, foundations, covered patios, underground utilities, roads, driveways, walkways, paving, curbing, parking areas, swimming pools, tennis courts, treehouses, playhouses, swingsets, trees, shrubbery, landscaping, fences, screening, walls, signs and any

other artificial or man-made changes or alterations to the natural condition of any Lot or Dwelling and any fixtures, appurtenances, personal property or devices installed, erected, constructed, attached, placed or maintained on the exterior of any Dwelling or any other buildings situated on any Lot or Dwelling. "Improvements" shall also mean any exterior alterations or additions to any existing Dwelling or other structure situated on a Lot and any grading, any excavation or fill, the volume of which exceeds eight (8) cubic yards.

8.06 **Occupant.** The term "Occupant" shall mean and include any family members, guests, tenants, agents, servants, employees and invitees of any Owner and their respective family members, guests, tenants, agents, servants, employees, invitees and any other person who occupies or uses any Lot or Dwelling within the Property. All actions or omissions of any Occupant is and shall be deemed the action or omission of the Owner of such Lot or Dwelling.

8.07 **Golf Property Easements and Establishment of Buffer Area**

(a) Developer does hereby declare, establish and create a permanent and perpetual buffer within the Buffer Area of each Golf Course Lot, which Buffer Area shall, subject to the terms and provisions of this Section 8.07(a) and Section 8.07(b) below, be maintained at all times in its natural, undisturbed state and condition, free of any Improvements or additional landscaping of any nature; provided, however, that notwithstanding anything provided in this Agreement to the contrary, Developer reserves, for itself and its successors and assigns, the right at any time and from time to time to (i) grade, excavate and fill any of the Buffer Areas to the extent reasonably necessary in the development of any of the Golf Course Lots or any other portions of the Property and (ii) construct, install, erect, operate, maintain, repair, replace and relocate within any of the Buffer Areas underground master television and/or cable and internet systems, security systems and all underground utilities necessary and convenient for the Property, including, without limitation, publicly and/or privately owned and/or operated electrical, gas, telephone, water and sanitary sewer services, storm drainage and sewers, drainage systems, and all lines, pipes, pumps, conduit, equipment and other machinery, apparatus and appurtenances which Developer determines, in its sole and absolute discretion, to be necessary or otherwise required to provide any such utility services to any portion of the Property. The rights reserved in this Section 8.07(a) by Developer shall also extend to and include the right to cut and remove trees, undergrowth and shrubbery, the right to grade, excavate or fill, and the right to otherwise take all other action in connection with the development of the Golf Course Lots and the installation, maintenance, repair, operation and replacement of all such utility services and systems, equipment and machinery which Developer determines, in its sole and absolute discretion, may be necessary to provide utility service to any portion of the Property. To the extent Developer exercises any of the easements reserved pursuant to this Section 8.07(a), then upon completion of any such grading, excavation or fill work undertaken within any of the Buffer Areas, all disturbed areas of such Buffer Areas shall be restored to a stabilized condition based on sound engineering practices and procedures and shall be replanted with trees, vegetation and other landscaping so that, to the extent practicable, the disturbed areas within the Buffer Areas are restored to substantially the condition which existed immediately prior to the exercise of such easements.

(b) Except for the rights reserved by Developer pursuant to Section 8.07(a) above, the rights granted to the then Golf Property Owner and the Owner of each Golf Course



Lot pursuant to Section 8.07(c) below and the rights established in favor of the ARC in Section 8.07(c) below, (i) no improvements of any nature, including, without limitation, fences, walls, berms, mounds, barriers, decks, docks, piers, terraces, patios, statutes, gardens, outdoor furniture, playhouses, play equipment, treehouses, dog houses, dog or other animal runs or pens, outdoor recreational, fitness, exercise, or children's play facilities and equipment, or any other devices, equipment, tools, machinery, buildings, structures, improvements or appurtenances of any nature (other than landscaping approved by the ARC pursuant to the provisions of Section 8.07(c) below), shall be constructed, erected, built, placed, maintained or permitted to remain within the Buffer Area of any Golf Course Lot, (ii) no construction activities of any nature, including, without limitation, grading or excavation work, installation of storm sewers or other types of pipes, lines, drains or conduit shall be allowed or permitted in or upon the Buffer Area of any Golf Course Lot, (iii) no shrubbery, trees, landscaping, vegetation or other plant life shall be planted, placed, erected, maintained or allowed to remain within the Buffer Area of any Golf Course Lot lying within the Buffer Area of any Golf Course Lot without the prior written consent of the ARC and (iv) no shrubbery, trees, landscaping, vegetation or other plant life lying within the Buffer Area of any Golf Course Lot may be cut, removed, damaged or mutilated without the prior written consent of the ARC; provided, however, that any and all dead vegetation, stumps, weeds, rubbish, debris, trash, refuse, garbage and waste material shall be promptly removed from the Buffer Area by the Owner of such Golf Course Lot.


(c) Notwithstanding the foregoing, both the Owner of any Golf Course Lot and the Golf Property Owner shall each have the right, with the prior written approval of the ARC, to construct and install additional landscaping, landscaping berms, screening and other improvements on or within the Buffer Area of any Golf Course Lot and, with the prior written approval of the ARC, to remove any existing trees, landscaping, undergrowth, or other forms of plant life within the Buffer Area. The ARC may require additional landscaping, landscaping berms, screening and other improvements be constructed, installed and maintained within the Buffer Area of any Golf Course Lot by the Owner of such Golf Course Lot as part of the initial landscaping of such Golf Course Lot.

#### **8.08 Establishment of Easements Over and Upon Golf Course Lots**

(a) Developer does hereby establish and reserve and grant to the Golf Property Owner, its employees, agents, guests and invitees, a permanent, perpetual and non-exclusive right and easement over, across, through and upon the Buffer Areas on each Golf Course Lot for the following purposes:

(i) The right, but not the obligation, to come upon any of the Buffer Area and maintain any and all landscaping, plant life and the grounds thereof (subject to the terms and provisions of Section 8.07(c) above regarding the installation of additional landscaping within any Buffer Area); and

(ii) The right, but not the obligation, to enter upon any of the Buffer Area to remove any dead vegetation, stumps, weeds, rubbish, debris, trash, refuse, garbage and waste material.

  
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Nothing contained in this Section 8.08(a) shall be deemed to obligate the Golf Property Owner to undertake any of the actions authorized in this Section 8.08(a).

(b) Developer does hereby establish and reserve and grant to the Golf Property Owner, its employees, agents, guests and invitees, a permanent and perpetual non-exclusive right and easement over, across, through and upon the Buffer Area located on each Golf Course Lot for the purpose of permitting entry thereon by golfers and their caddies to remove golf balls therefrom, without any such entry being deemed a trespass. In the exercise of the easements and rights granted pursuant this Section 8.08(b), golfers and caddies shall not be entitled to enter upon the Buffer Areas of any Golf Course Lot with a golf cart or other vehicle, nor shall such golfers or their caddies spend an unreasonable amount of time within the Buffer Areas which would otherwise constitute a nuisance to the then owners of the applicable Golf Course Lot.

(c) Developer does hereby establish and reserve and grant to the (i) Golf Property Owner, its employees, agents, guests and invitees, a permanent and perpetual non-exclusive right and easement over, across, through and upon the Buffer Area located on each Golf Course Lot for the purposes of entry onto and, with the prior written approval of the ARC, the right to install or remove any landscaping within the Buffer Area of any Golf Course Lot in accordance with the terms and provisions of Section 8.07(c) above and (ii) ARC and its agents, employees, representatives and invitees, a permanent and perpetual non-exclusive right and easement over, across, through and upon each Golf Course Lot for the purpose of inspecting such Golf Course Lot to determine compliance with all of the terms and provisions of this Agreement.

**8.09 Golf Course Lots Setback Requirements.** With respect to each Golf Course Lot, the rear building setback line for such Golf Course Lot shall be a minimum of 40 feet from the common property line of such Golf Course Lot and the Golf Property, or such other greater distance established by the ARC at its sole and absolute discretion.

**8.10. Use Restrictions for Golf Course Lots.**

(a) Subject to the provisions of Section 8.07(a) above (pursuant to which Developer has reserved the right to grade, excavate and fill any of the Buffer Areas and to install underground utilities within the Buffer Area of each Golf Course Lot), all Golf Course Lots shall be developed and used solely for those uses approved in this Declaration and for no other uses or purposes whatsoever without the prior written approval of the ARC, which approval may be granted or withheld by the ARC in its sole and absolute discretion.

(b) No swimming pools, tennis courts, hot tubs, or water features shall be constructed on any Golf Course Lots without the prior written approval of the ARC, which approval may be granted or withheld in its sole and absolute discretion. The foregoing provisions shall apply to all areas of a Golf Course Lot and shall not be limited to the Buffer Area of a Golf Course Lot.

(c) No trampolines of any kind shall be erected, constructed, built, placed, installed, or permitted to remain in or upon any Golf Course Lot without the prior written

approval of the ARC, which approval may be granted or withheld in its sole and absolute discretion. The foregoing prohibition on trampolines shall extend to all areas of a Golf Course Lot and shall not be limited to the Buffer Area of each Golf Course Lot. The foregoing provisions shall apply to all areas of a Golf Course Lot and shall not be limited to the Buffer Area of a Golf Course Lot.

(d) No swing sets, jungle gyms or other recreational, fitness, exercise, or children's play facilities, equipment or other devices shall be erected, constructed, built, placed, installed or permitted to remain in or upon any Golf Course Lot unless (i) the same has been approved in writing by the ARC and (ii) any and all requirements and conditions which may be established by the ARC for the construction and installation of any of the foregoing improvements on or within any Golf Course Lot have been satisfied by the owner of such Golf Course Lot. The foregoing provisions shall apply to all areas of a Golf Course Lot and shall not be limited to the Buffer Area of a Golf Course Lot.

(e) The Owner and Occupants of any Golf Course Lot and any Improvements thereto, as well as their respective family members, guests, agents, employees and invitees, shall refrain from any actions or activities which would distract the playing qualities on any golf course located on the Golf Property or which would create a nuisance or annoyance, as determined in the sole and absolute discretion of the ARC. Such prohibited activities shall include, without limitation, burning materials, plant life or other debris; maintenance of dogs or other pets which interfere with golf course play due to their barking or odors or entry onto the Golf Property; any entry onto the Golf Property (including, but not limited to, jogging, walking, picking up golf balls, hitting golf balls or attempting the unauthorized play of golf on the Golf Property) by the Owners and Occupants of any Golf Course Lot or the Improvements thereto, including, without limitation, the respective family members, guests, agents, employees, and invitees of such Owner or Occupants; playing of loud radios, televisions, stereos, or musical instruments, human noise level (*i.e.*, voices, yelling, screaming, whistling or other sounds), which can be heard from the Golf Property; the maintenance of any outdoor recreational or fitness equipment or Improvements which result in noises whether by the persons using the same or by the Improvements themselves; or allowing trash, rubbish, weeds, or undergrowth to remain or grow on any Golf Course Lot which is unsightly, as determined by the ARC, in its sole and absolute discretion.

8.11 Developer or Grantee of Developer (the City of Pelham, Alabama) contemplate (but shall have no obligation to do so) constructing a golf course, clubhouse and related facilities and amenities (collectively, the "Golf Course") adjacent to or in close proximity with the Property. **THE GOLF COURSE IS NOT PART OF THE COMMON AREA NOR IS IT TO BE GOVERNED BY THE PROVISIONS OF THESE PROTECTIVE COVENANTS. NO OWNER OF ANY LOT OR THE ASSOCIATION SHALL HAVE ANY RIGHT IN AND TO, OR ANY OBLIGATIONS WITH RESPECT TO, THE GOLF COURSE BY VIRTUE OF THESE PROTECTIVE COVENANTS OR BY VIRTUE OF THE OWNERSHIP OF ANY LOT WITHIN THE PROPERTY. THE GOLF COURSE IS TO BE USED SOLELY BY THE MEMBERS AND INVITEES OF THE GOLF CLUB AND OWNERSHIP OF ANY PORTION OF THE PROPERTY OR ANY LOT OR DWELLING THEREIN**



**SHALL NOT ENTITLE SUCH OWNER TO ANY RIGHT IN, OR TO THE USE OF THE GOLF COURSE.**

8.12 The Owner of any Lot situated adjacent to or in close proximity with the Golf Course, by acceptance of a deed to such Lot, hereby waives and releases Developer, the Committee, the Association and the owners, lessees and operators of the Golf Course and their respective officers, directors, shareholders, members and partners, from any and all liability of any nature whatsoever arising out of or in connection with any damage or injury (including death) to person or property caused by any golf balls entering onto such Owner's Lot.

**ARTICLE IX  
MISCELLANEOUS**

9.01 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 or 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 event shall Developer be obligated to submit any Additional Property to the provisions of these 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.

9.02 The terms and provisions of these Protective Covenants shall be binding upon each Owner and their respective heirs, executors, administrators, personal representatives, successors and assigns of each Owner and shall inure to the benefit of Developer, the Committee, the Association and all of the Owners of any of the 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 these Protective Covenants.

9.03 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 of ten (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.

9.04 Subject to the provisions of Sections 9.01 and 9.09 hereof, these covenants and restrictions may be amended or altered (a) solely by Developer during such periods of 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 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.

9.05 All personal pronouns used herein, whether used in masculine, feminine or neuter gender, shall include all genders. The use of the singular tense shall include the plural and vice versa.

9.06 Each Owner hereby waives any right to seek or obtain judicial partition of any portion of the Property.

9.07 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 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.

9.08 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.

9.09 Developer reserves the right, in its sole and absolute discretion, at any time and from time to time, without any obligation or requirement to obtain the consent or approval of any Owners or any of their mortgagees, to (a) add any additional real Property to the Development to the extent the same may be developed for Residential Lots, (b) amend Exhibit "A" attached hereto in order to add or remove any real property from the definition of the Development, (c) alter, change or extend any roadways within the Development or alter any street grades of any roads within the Development, without liability to the Owners for any claims for damages resulting from such alterations or changes, and (d) change, modify or adopt different covenants and restrictions which would affect the Residential Lots within other portions of the Development, which covenants and restrictions may be different from those set forth in these Protective Covenants. Developer may undertake any of the actions set forth in this Section 9.09, including, without limitation, executing and recording amendments to these Protective Covenants with respect to any of the matters described in items (a) through (d) above, without the consent or approval of any Owner or his mortgagee. **The Protective Covenants shall be applicable only to the Property, and shall not extend to or be binding upon any other real**



property owned by Developer or any portion of the Development unless expressly subjected to the terms and provisions of these Protective Covenants by an instrument duly executed by Developer and recorded in the Office of the Judge of Probate of Shelby County, Alabama. The Development shall not include any real property which may be developed for schools, golf courses, commercial uses or any other uses which are not Residential Lots (collectively, "Non-Residential Uses") and any of the real property described in Exhibit "A" hereto which is developed for Non-Residential Uses shall not be subject to assessments pursuant to these Protective Covenants or pursuant to the Articles of Incorporation or Bylaws of the Association.

9.10 In addition to the covenants contained herein, all lots fronting or adjacent to a lake shall also be subject to those certain Lake Covenants recorded in the Probate Office of Shelby County, Alabama.

IN WITNESS WHEREOF, the Developer, and the owners of all other Lots, subject to the Original Covenants, have executed this instrument on the 27<sup>th</sup> day of December, 2016.

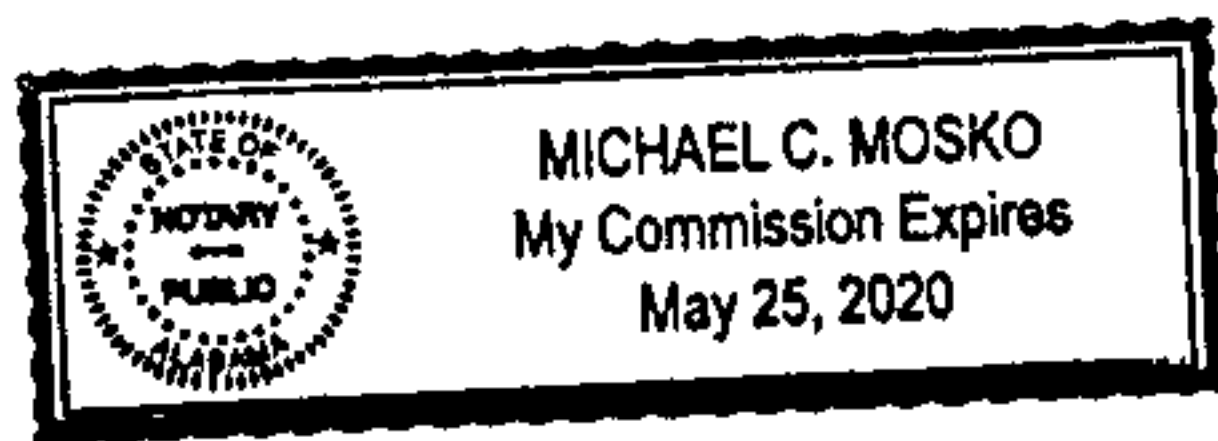
MOBLEY DEVELOPMENT, INC.

By: J. St Mobley  
J. Steven Mobley, President

STATE OF ALABAMA)  
COUNTY OF SHELBY)

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

Given under my hand and official seal this 27<sup>th</sup> day of December, 2016.



Michael C. Mosko  
NOTARY PUBLIC  
My Commission Expires: 5-25-2020

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Shelby Cnty Judge of Probate, AL  
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