


STATE OF ALABAMA )  
COUNTY OF SHELBY )

  
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Shelby Cnty Judge of Probate, AL  
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**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS  
FOR  
DEARING FARMS, A RESIDENTIAL SUBDIVISION**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS (this "Declaration") is made as of this 15<sup>th</sup> day of August, 2017, by Dearing Farms - Helena, LLC, an Alabama Limited Liability Company ("Developer"), which declares that the real property hereinafter described, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges, and liens hereinafter set forth (sometimes hereinafter referred to as the "Protective Covenants") and

WHEREAS, the Developer is presently the owner of certain real property located in Shelby County, Alabama, a portion of such real property being described in the Plat of Dearing Farms, recorded in the Office of the Judge of Probate of Shelby County, Alabama in Map Book 48, Page 31 (such property, together with any other property which may become subject to the Protective Covenants as hereinafter defined as "Additional Property", being collectively referred to herein as the "Property"); and


WHEREAS, the Developer intends to develop the Property into a residential subdivision, together with Common Areas hereafter described, as part of a planned residential community (collectively, the "Subdivision") and

WHEREAS, the Developer desires to establish and enforce uniform standards of development quality and to provide for the effective preservation of the appearance and value of the Property, which benefit all Owners of the Property and, to this end, desires to subject the Property, together with such additions thereto as may hereafter be made, to the Protective Covenants, all of which are for the benefit of the Property and each Owner thereof; and

WHEREAS, the Developer has created a nonprofit corporation Dearing Farms Homeowner' Association, Inc. (the "Association") to which it has delegated the responsibility for the management and regulation of the Common Areas and assigned the powers of enforcing the provisions of this Declaration and any additional covenants and restrictions that are placed against property that is now or may hereafter be included in the Development and of levying assessments against the Owners of Lots within the Subdivision to enable the Association to perform such obligations.

NOW, THEREFORE, the Developer declares that the Property and such additions thereto as may hereafter be made pursuant to Section 2.2 hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the Protective Covenants, all of which shall be construed as and deemed to be covenants running with the land and shall be binding on and inure to the benefit of all parties having a right, title or interest in the said Property, as well as their heirs, successors and assigns.

**ARTICLE I  
DEFINITIONS**

  
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As used in this Declaration, the following terms shall have the following meanings, which meanings shall be applicable to both the singular and plural forms and tenses of such terms:

1.1 “Additional Property” shall mean any additional property, which may hereafter be subjected to the Protective Covenants as Set forth in Section 2.2 hereof.

1.2 “Architectural Review Committee” or “ARC” shall mean the Architectural Review Committee appointed pursuant to Article IV hereof with the rights and obligations conferred upon such Architectural Review Committee pursuant to this Declaration.”

1.3 “ARC Guidelines” means and refers to any written architectural, landscaping, and use regulations, specifications, procedures, guidelines and policies which may be promulgated by the ARC in accordance with applicable provisions of this Declaration.

1.4 “Articles” shall mean the Articles of Incorporation of the Association, as said Articles may be amended from time to time.

1.5 “Assessment” shall mean the assessments to be assessed against the Owners pursuant to the authority vested in the Association, and such term shall include annual assessments, special assessments, individual assessments, and Common Area Assessments, all as described in Article VI hereof.

1.6 “Association” shall mean and refer to Dearing Farms Homeowners’ Association, Inc., an Alabama non-profit corporation, formed or to be formed at or about the same time as the filing of this Declaration under the Alabama Non-Profit Corporation Act, as well as its successors or assigns. This is the Declaration of Protective Covenants to which the Articles and By-Laws of the Association make reference.

1.7 “Board” or “Board of Directors” shall mean the Board of Directors of the Association.

1.8 “By-laws” shall mean the By-laws of the Association; as such by-laws may be amended from time to time.

1.9 “Common Area” or “Commons Areas” as the case may be, shall mean and refer to all real and/or personal property, including property which the Association owns, leases, or otherwise maintains for the use or enjoyment of the members of the Association, and which shall be responsibility of the Association to maintain, and which shall include, without limitation, the following:

(a) all detention ponds situated within the Property or any Additional Property hereafter subjected to these Protective Covenants;

(b) the monument sign and landscaping for the entrance area for the Subdivision;

(c) all installations for the furnishing of electricity, telephone, natural gas, sanitary sewer (including all pumping stations), water service and television cable not immediately appurtenant to any Dwelling;

(d) all outdoor exterior lighting not situated within the boundaries of any Lot;

(e) landscaping, trees, and walkways not situated within the boundaries of any Lot (which shall include the main entrance);

(f) all portions of the Property which are designed or designated on the Plat or otherwise for collecting, retaining, and discharging surface and subsurface water from the Property, including without limitation all drainage/utility easement area; and

(g) any and all other areas designated on the Subdivision Record Map as a "Common Area."

1.10 "Control Period" shall have the meaning ascribed to it in Section 11.1 hereof.

1.11 "Declaration" shall mean this entire document, as same may from time to time be amended.

1.12 "Developer" shall mean Dearing Farms – Helena LLC, an Alabama limited Liability Company, its successor and assigns, if such successors or assigns acquire any portion of the Property and are designated as successor developer by Developer.

1.13 "Dwelling" shall mean a dwelling constructed on the Property in accordance with the restrictions and conditions set forth in Article V hereof and the ARC Guidelines.

1.14 "Entrance Easement" shall have the meaning ascribed to it in Section 3.1 hereof.

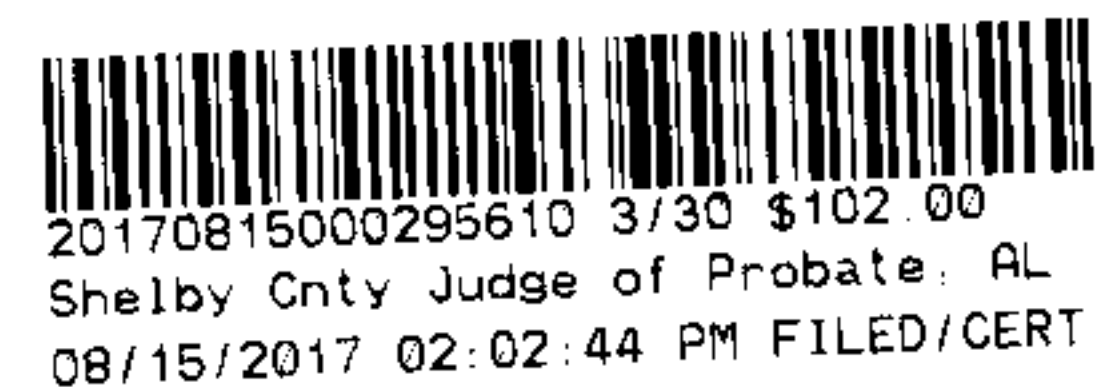
1.15 "Living Area" shall mean enclosed and covered areas within a Dwelling which are heated and cooled by heating, ventilating, and air conditions equipment, exclusive porches, garages, basements, carports, or attics.

1.16 "Lots" shall mean and refer to the individual lots shown on the Subdivision Record Map, as the same may be amended from time to time. A Lot shall be deemed "Developed" when all offsite streets and utilities have been completely installed. A Lot shall be deemed "Improved" when a Dwelling has been completely constructed thereon.

1.17 "Member" shall mean any person who is a member of the Association. Every Owner shall be a Member.

1.18 "Mortgage" shall mean any mortgage or other security device encumbering a Lot or Dwelling or any interest therein and which shall have been duly and properly recorded in the Office of the Judge of Probate of Shelby County, Alabama.

1.19 "Mortgagee" shall mean the holder of any Mortgage.





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

1.21 "Owner" shall mean and refer to the record owner, including Developer, of fee simple title to any Lot or Dwelling, whether a corporation, partnership, proprietorship, association or other entity of any nature, including natural persons, but shall not include (i) any Mortgagee unless and until such Mortgagee has foreclosed on its Mortgage and purchased such Lot or Dwelling at the foreclosure sale held with respect to the foreclosure of such Mortgage or (ii) any lessee, purchaser, contract purchaser or vendor who has an interest in any Lot or Dwelling solely by virtue of a lease, contract, installment contract or other agreement.

1.22 "Property" shall have the meaning set forth in the first "Whereas" paragraph of this Declaration.

1.23 "Protective Covenants" shall mean all of those covenants, conditions and restrictions contained in this Declaration.

1.24 "Purchaser" shall mean any person who acquires any Lot.

1.25 "Single Family Unit" shall mean a group of one or more persons each related to the other by marriage or legal adoption, or a group of not more than three persons not all so related, who maintain a common household in a dwelling.

1.26 "Subdivision" shall mean all sectors or phases of Dearing Farms, collectively, and any amendments or supplements thereof.

1.27 "Subdivision Record Map" shall mean the recorded map or plat for Dearing Farms, recorded in the Office of the Judge of Probate of Shelby County, Alabama, in Map Book 48, Page 31 and any amendments or supplements thereof.

## **ARTICLE II PROPERTY SUBJECT TO RESTRICTIONS**

2.1 General Declaration. The Property which presently is and shall be held, transferred, sold, conveyed, and occupied subject to the easements, covenants, conditions, restrictions, charges, liens and regulations of this Declaration is located in Shelby County, Alabama. Any part of such Property and each Lot or Dwelling thereof shall be held, owned, sold, transferred, conveyed, hypothecated, encumbered, leased, occupied, built upon and otherwise used, improved and maintained subject to the terms of this Declaration, which easements, covenants, conditions, restrictions, charges, liens and regulations shall run with the title to such Property and shall be binding upon and inure to the benefit of Developer and upon all Owners and Occupants of such Property and any Lot or Dwelling thereof. This Declaration shall not apply to any other real property owned by Developer unless the same is subjected specifically by written instrument to this Declaration in accordance with Section 2.2 hereof.

2.2 Additional Property. Developer reserves the right, in its sole and absolute discretion and without the consent of the Association or its Members or by an Owner, Occupant, or Mortgagee of any Lot or Dwelling, at any time and from time to time during the pendency of this Declaration, to add and submit any Additional Property to the provisions of this Declaration and, to the extent any of the Additional Property is specifically submitted to the terms and provisions of this Declaration by Developers then any such Additional Property shall constitute part of the Property. Additional Property may be submitted to the provisions of this Declaration by an instrument executed by Developer, in the manner required for the execution of deeds and recorded in the Office of Judge of Probate of Shelby County, Alabama, which instrument shall be deemed an amendment to this Declaration (which need not be consented to or approved by any Owner, Occupant or Mortgagee of any Lot or Dwelling) and shall (a) refer to this Declaration stating the Instrument Number in the Office of Judge of Probate of Shelby County, Alabama, where this Declaration is recorded, (b) contain a statement that such Additional Property is conveyed subject to the provisions of this Declaration, (c) contain an exact description of such Additional Property and (d) state such other or different covenants, conditions and restrictions as the Developer, in their sole discretion, shall specify to regulate and control the use, occupancy and improvement of such Additional Property. In no event shall Developer be obligated to submit any Additional Property to the provisions of this Declaration or to impose any of the covenants, conditions or restrictions set forth in this Declaration upon any real property owned by Developer situated adjacent to or in close proximity with the Development. Notwithstanding anything provided in this Declaration to the contrary, (1) the provisions of this Section 2.2 may not be abrogated, modified, rescinded, supplemented or amended, in whole or in part, without the prior written consent of Developer and (2) the rights reserved by Developer pursuant to this Section 2.2 shall not be deemed to inure to the benefit of any transferee or purchaser of the Additional Property or any portion thereof, unless Developer, in its sole discretion, transfers and conveys to such transferee or purchaser the rights reserved herein by express reference to Section 2.2 of this Declaration.

2.3 Right of Developer to Modify Restrictions with Respect to Lots Owned by Developer. With respect to any Lot owned by Developer, Developer may, by deed, contract or other instrument filed for record in the manner specified in Section 2.2 above, modify the provisions of this Declaration as the same apply to any such Lot, without the consent of the Association, or its Members or by any Owner, Occupant, or Mortgagee of any Lot or Dwelling.

2.4 Mutuality of Benefit and Obligation. The provisions of this Declaration are made (a) for the mutual and reciprocal benefit of each Lot or Dwelling within the Property and are intended to create mutual, equitable servitudes upon and in favor of each Lot and Dwelling, (b) to create reciprocal rights and obligations between the respective Owners, Occupants and all future and subsequent Owners and Occupants of any Lot or Dwelling within the Property, and (c) to create a privity of contract and estate between the Owners and Occupants, their respective heirs, successors and assigns.

2.5 Development of Property. Developer shall have the right, but not the obligation, for so long as Developer owns any Lot or Dwelling in the Property, to make improvements and changes to all Lots or Dwellings owned by Developer, including, without limitation, (i) changes in the location of the boundaries of any Lots or Dwellings owned by Developer, (ii) installation and maintenance of any water, sewer and any other utility systems and facilities, and (iii) installation of security and trash and refuse facilities.



2.6 Subdivision Plat/Developer's Lots. Developer reserves the right to record, modify, amend, revise and otherwise add to, at any time and from time to time, the subdivision plat of the Property setting forth such information as Developer may deem necessary with regard to the Property, including, without limitation, the locations and dimensions of all Lots, Dwellings, Common Areas, Additional Property, public or private roads, utility systems, drainage systems, utility easements, drainage easements, access easements, set-back line restrictions, lakes, retention ponds and drainage basins. Any such subdivision plats or any amendments thereto shall be binding on the portions of the Property indicated thereon as if such subdivision plat were specifically incorporated into this Declaration. Notwithstanding anything provided to the contrary in this Declaration, Developer may at any time or from time to time divide and redivide, combine and resubdivide any Lots owned by Developer.

### **ARTICLE III EASEMENTS**

#### **3.1 Grant of Nonexclusive Easements to Owners.**

(a) Common Areas. Subject to the terms and conditions of this Declaration and the rules and regulations from time to time established by the Association with respect to the Common Areas, Developer does hereby grant to each Owner and Occupant the nonexclusive right, privilege, and easement of access to and the use and enjoyment of the Common Areas in common with all other Owners and Occupants. The easement and rights granted pursuant to this Section 3.1(a) are and shall be permanent and perpetual, are nonexclusive, are appurtenant to, and shall pass and run with title to each Lot.

#### **(b) Entrance and Shared Driveway Easement.**

Developer hereby declares that there will be an easement for each of the shared driveways as shown on the Plat Map as referenced above.

3.2 Utility Easements. Developer reserves for itself and the Association the right to use, dedicate and/or convey to the appropriate local authority or agency, and/or to the appropriate utility company or other companies, rights-of-way or easements on, over or under the ground to erect, maintain and use, electric and telephone poles, wires, cables, cable television, conduits, storm sewers, sanitary sewers, surface drainage, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water, surface water drainage, cable television, or other public conveniences or utilities, on, in and over the utility easements reflected on the Subdivision Record Map or as may hereafter appear on any plat of record of Property subject to these Protective Covenants. Without limitation upon the foregoing, Developer specifically reserves a ten (10) foot easement on the rear property line and a five (5) foot easement on the side of each Lot for surface water drainage, together with the right to construct within such reserved easement such swales and other surface water drainage systems as Developer shall, in its sole discretion, deem necessary. In addition, no utility junction boxes, enclosures, pedestals or other above ground utility apparatus (other than street lights) may be situated in the front yard of any Lot which is served by a rear private alley, unless the approval of the ARC is first obtained.

3.3 Additional Easements and Uses. For so long as the Developer owns any Lot, the Developer, and, thereafter, the Association, on its own behalf and on behalf of all Owners, who hereby appoint the Developer and/or the Association, as the case may be, irrevocably, as their attorney-in-fact for such purposes, shall have the right to grant such additional electric, telephone, water, sanitary sewer, landscaping, irrigation, security, maintenance, drainage, gas, cable television and/or other utility, recreational or service easements or facilities (subject to applicable restrictions), in any portion of the Property, and to grant access easements or relocate any existing access easements in any portion of the Property, as the Developer or the Association shall deem necessary or desirable for the proper operation and maintenance of the Property, or any portion thereof, or for the general welfare of the Owners, or for the purpose of carrying out any provisions of this Declaration, provided (a) such new easements or relocation of existing easements will not, in the opinion of the Board of Directors of the Association, unreasonably interfere with any Owner's enjoyment of the portion of the Property owned by such Owner, (b) any required work is done at the sole cost and expense of the Association, and after completing such work, the Association will restore any portion of the Property which was affected to the same or as good a condition as existed immediately before the commencement of such work, and (c) following the completion of such work, the Association shall cause a survey to be made of the easement showing its location on the Property and cause the same to be recorded in the Office of Judge of Probate of Shelby County, Alabama. Such right of the Developer and/or the Association shall also include the right to provide for such simultaneous or concurrent usage of any presently existing or additional easements for such purposes, not infringing upon their stated purposes, as it may deem necessary or desirable, including, but not limited to, their use for the recreational purposes of the Owners, Occupants, and the Owner's and Occupant's respective tenants, employees, guests, invitees, licensees and agents.

3.4 Reservation of General Access Easement. Developer does hereby establish and reserve for the Association and its respective agents, employees, representatives, invitees, successors and assigns, a permanent and perpetual nonexclusive easement appurtenant over, across, through and upon each Lot for the purpose of providing ingress to and egress from each Lot for (a) inspecting each Lot and any improvements thereon in order to determine compliance with the provisions of this Declaration and/or other applicable regulations or covenants, and (b) the performance of tire duties of the Association hereunder, including, without limitation, taking any action required or permitted to be taken by the Association pursuant to any of the terms or provisions of this Declaration and/or other applicable regulations or covenants; provided, however, that upon completion and occupancy of any Dwelling, then except in the event of emergencies, the foregoing easement shall be utilized only during normal business hours and then, whenever practicable, only upon advance notice to the Owner of such Lot directly affected thereby.

3.5 Additional Documents. All Owners shall be required to execute such other documents as are necessary or convenient to effectuate the intent of this Declaration with respect to all easements which may be created pursuant to this Article III.

3.6 Limitations. Any easements which may be created pursuant to this Article III shall be appurtenant to, and the benefits and burdens thereof shall pass along with the title to, every Lot and are further subject to the following limitations:

- (a) All provisions of this Declaration and the Articles and By-Laws of the Association;





(b) All the rules and regulations governing the use and enjoyment of the Common Areas which may or may have been or may hereafter be adopted by the Association; and

(e) All restrictions contained on any and all plats of all or any part of the Common Areas or any other part or parts of the Property.

#### **ARTICLE IV ARCHTECTURAL CONTROL**

##### **4.1 ARC Guidelines.**

(a) The general architectural objective of the Developer for the Property is to create a neighborhood of Dwellings constructed in high quality styles, design, materials, and colors. All Dwellings shall be constructed in conformity with the ARC Guidelines and in accordance with the provisions of this Declaration. The Developer, by the terms of this Declaration, has charged the ARC with the approval of all Dwellings, prior to construction, so as to determine that all Dwellings meet the ARC Guidelines. In appropriate cases, the ARC shall be entitled to grant variances from the ARC Guidelines, as described in Section 4.6 hereof.

The ARC is hereby empowered and authorized to formulate and promulgate ARC Guidelines to govern (i) the review, approval, rejection, form, content and provisions of all landscaping or architectural submissions, and (ii) the rules and regulations governing restrictions as to the use of the Property. The ARC will provide a copy of the ARC Guidelines, and any amendments thereto, to each Owner. Such ARC Guidelines must be followed by all applicants submitting plans for review and approval by the ARC. Decisions of the ARC shall be based upon the uniform application of such reasonable, but high, standards as are consistent with the ARC Guidelines, such standards to include, among other things, the harmony of external design including roof style (pitch, shingle and color), chimney, exterior siding (material and color), windows and trim, shutters (color and style), front doors, garage doors, location in relation to surrounding structures and topography, variation in front setbacks, the type, kind and character of buildings, structure and other improvements, and aesthetic qualities in general.

4.2 Method of Architectural Control. So as to establish and maintain the ARC Guidelines set forth in this Declaration, no improvement or structure of any kind, including, without limitation, any Dwelling, fence, wall, sign, lighting system, site paving, grading, parking lot, screen enclosure, sewer drain, disposal system, statuary, signs, flags, flag poles, water fountains, yard sets, window awnings or other exterior window covering, decorative building, landscaping, landscape device or object, shall be commenced, erected, placed, or maintained upon a Lot, nor shall any addition, change, or alteration therein, thereof, or thereto be made, unless and until the plans and specifications, showing the color, nature, kind, shape, elevation, materials and location of the same, together with such information as the ARC may require, shall have been submitted to and approved in writing by the ARC.

4.3 ARC Membership. The ARC shall consist of three (3) members and the initial members shall be appointed by the Developer. In the event of the death, resignation or other termination of any members, the Developer during the Control Period, shall have full authority to appoint successor members. The Developer's appointed members shall serve during the Control Period, whereupon, the Developer's control and authority and Developer's appointed members





to the ARC shall cease, and the Developer shall thereupon assume full control and authority over the ARC for the balance of the Control Period. Upon the expiration of the Control Period, the Association shall assume full control and authority over the ARC. Developer, during the Control Period, and thereafter the Association (from and after the time that it has assumed control of the ARC) reserve the right to remove any member from the ARC at any time with or without cause, in such parties' sole discretion.

4.4 Release. Neither the ARC nor any member thereof shall be liable to any Owner, Occupant or to any other party for any damage, loss, or prejudice suffered on account of the approval or disapproval of any plans, drawings, or specifications, whether or not defective, or the execution or filing of any action, motion, certificate, petition, or protest in the courts of the United States or the State of Alabama, or with any other governmental board or body, whether or not the facts stated therein are true and correct. Neither the ARC nor any member thereof shall have any liability for structural defects, building code compliance, or similar issues, the sole responsibilities of the ARC being limited to aesthetic approvals and compliance with this Declaration. Without limitation on the foregoing, the ARC shall have no obligation to review any submittals for their compliance with applicable building codes or other inadequacy or deficiency, and approval of any submitted plans by the ARC shall not constitute a basis for any liability of the members of the ARC, the Developer, members of the Board or the Association as regards any failure of such approved plans to conform to any applicable building codes or other inadequacy or deficiency in the said plans. Neither the ARC, nor any of its members, shall in any way or manner be held liable to any Owner, the Association or any other person or entity for its good faith exercise of the discretionary authority herein conferred.

4.5 Powers and Duties. The ARC shall have the following powers and duties:

(a) To require submission to the ARC of plans and specifications for any improvement or structure of any kind, and any change, modification, or alteration thereof, including, without limitation, any such improvement or change to any Dwelling, fence, wall, sign, lighting system, site paving, grading, parking lot, screen enclosure, sewer drain, disposal system, statuary, signs, flags, flag poles, water fountains, yard sets, decorative building, landscaping, landscape device or object, the construction or placement of which is or is proposed upon any Lot. Such plans and specifications shall be in such form and shall contain such information as may be reasonably required by the ARC and shall include but not necessarily be limited to:

(i) An accurately drawn and dimensional plot plan showing all setbacks, easements, drives and walks;

(ii) A foundation plan, floor plan, landscape plan, and exterior elevations of the Dwellings as they will actually appear after all back filling and landscaping is done from finished ground up;

(iii) All plans must include a specifications list of proposed materials and samples of exterior materials and colors which cannot be adequately described on the plans, and of materials with which the ARC is unfamiliar; and

(iv) The name and address of the Lot Owner's General Contractor who will construct the residence and all other improvements to the Lot.



The ARC may also require such additional information as reasonably may be necessary for the ARC to evaluate completely the proposed structure or improvement in accordance with this Declaration. All information submitted to the ARC shall be delivered to the office of Ryan C. Medo, 9 Office park Circle, Suite 215, Birmingham, AL 35223 or such other address as may be reflected by the ARC in a duly recorded instrument filed in the Office of Judge of Probate of Shelby County, Alabama.

(b) To approve or disapprove the submitted plans and specification for any Dwelling, improvement, structure as herein above described prior to commencement of construction or such Dwelling, improvement, or structure within thirty (30) days of submission of the documentation required herein. Partial submissions shall not be permitted.

(c) In the event the ARC fails to approve or disapprove any submitted plans by notice in writing sent to the applicant within thirty (30) days following submission to the ARC, then, unless an extension of time has been accepted by the applicant, the applicant may (i) at any time thereafter inform the ARC and the Board, by written notice sent separately to both the ARC and the Board, of the ARC's failure to approve or disapprove the applicant's submitted plans (which notice shall specifically list and identify all materials comprising the applicant's submitted plans), and (ii) if the ARC shall fail to approve or disapprove the applicant's submitted plans within thirty (30) days following its receipt of the said notice, the submitted plans will be deemed to be approved by the ARC to the extent same conform to all other express terms and provisions of this Declaration. The approval by the ARC of any plans and specifications for any Dwelling, improvement, or structure shall not be deemed a waiver of the right to object to any of the features or elements embodied in any subsequent plans and specifications if and when the same features and elements are embodied in any subsequent plans and specifications submitted for approval for use on other Lots. If any Dwelling, improvement, or structure as aforesaid shall be completed, changed, modified or altered without the prior approval of the ARC, or shall not be completed, changed, modified or altered in accordance with the approvals granted by the ARC, then the Owner shall, upon and in accordance with a demand by the ARC, cause the Dwelling, improvement, or structure either to be restored to its original condition or to comply with the plans and specification as approved by the ARC, and shall bear all costs and reasonable attorneys' fees of the ARC. Any agent or member of the ARC may at any reasonable time enter any building or property subject to the jurisdiction of the ARC which is under construction or on or in which the agent or member may believe that a violation of these Protective Covenants is occurring or has occurred. Prior to the use or occupancy of any Dwelling, improvement, or structure constructed or erected on any Lot, the Owner thereof shall apply for certification from the ARC that the construction thereof has been completed in accordance with the plans and specifications approved by the ARC. In the event that the ARC shall fail, for a period of thirty (30) days from the date of receipt of such application, to give or deny such certification, the same shall be deemed to have been given. The ARC may, from time to time, delegate to a person or persons the right to approve or disapprove plans and specifications and to issue such certification.

(d) To adopt fees which may be designed to reimburse the ARC for the necessary and reasonable costs incurred by it in processing requests for ARC approval of any matters under its jurisdiction. Such fees, if any, shall be payable to the ARC, in cash, at the time that any application for approval is sought from the ARC.



(e) Neither the ARC nor 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.

(f) The initial three members of the ARC appointed by the Developer are as follows: Ryan C. Medo, Wes Davis and Robert F. Ashurst.

4.6 ARC Guidelines. The Developer of the Dearing Farms Residential Subdivision is desirous of an aesthetically pleasing and functionally convenient community and for that purpose has declared and recorded a Declaration of Covenants, Conditions, and Restrictions for Dearing Farms, a Residential Subdivision (the "Declaration") applicable to all improvements within said Subdivision. The Declaration establishes the Dearing Farms Homeowners' Association, Inc. (the "Association") and the Dearing Farms Architectural Review Committee (the "ARC") and sets forth its jurisdiction, powers, obligations, and rules and regulations under which the ARC will conduct its review of proposed improvements. All capitalized terms used in this document without definition shall have the meanings set forth in the Declaration.

The ARC has been established to defined and interpret aesthetic standards for Dearing Farms and examine, approve, or deny all proposed improvements for all residences. ARC approval must be obtained for, but is not limited to: any Dwelling, fence, wall, sign, lighting system, site paving, grading, parking lot, screen enclosure, sewer drain, disposal system, statuary, signs, flags, flag poles, water fountains, yard sets, window awnings or other exterior window covering, decorative building, landscaping, landscape device or object. Reference is made to the Declaration for the procedures for obtaining ARC approval.

Set forth below are the ARC Guidelines referenced in the Declaration, which such ARC Guidelines are effective as of the date stated above but may be amended or supplemented from time in accordance with the provisions set forth in the Declaration:

1. Limitation on Size and Location of Structure.

(a) All Lots shall be known and described as Residential Lots and shall be used for single-family residential purposes exclusively. Under no circumstances may any lot owner including Developer further subdivide any lot.

(b) 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 thirty five (35) feet in height, 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 IV hereof.

(c) 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 temporary construction field office and as a sales/marketing office.

(d) Subject to the provisions of Articles V, VI 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 the City of Helena's E2 requirements:

Front: 40 feet from dedicated road right-of-way;

Side: 20 feet from one side Lot line with a total of 50 feet for both side Lot lines combined.

Rear: 40 feet from the rear Lot line.

(e) No Lot shall be used except for single-family residential purposes. No dwelling shall be erected on any Lot containing less than two thousand (2,000) square feet of living area for a one (1) story dwelling. Story and one-half dwellings must have a minimum of two thousand (2,000) 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, basements or decks.


(f) The Developer at his expense will construct a three (3) rail wooden fence along the Right of Way of County Road 95. Periodically, this fence will need maintenance. It shall be the Dearing Farms HOA's responsibility to repair, stain, or perform any other maintenance needed to keep the uniformity and integrity of the fence throughout all Lots.

(g) It shall be the Dearing Farms HOA's responsibility to maintain the shared space between driveways.

### 3. Maintenance.

(a) All Dwellings, landscaping and other improvements upon individual Lots shall be continuously maintained by the Owner thereof so as to preserve a well-kept appearance, especially along the perimeters of any Lot.

(b) No trash, garbage or other refuse shall be dumped, stored or accumulated on any Lot. 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 ARC so as not to be visible from any road or within sight distance of any other Lot 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 period, or except as specifically approved by the ARC.

  
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(c) No weeds, underbrush or other unsightly growth shall be permitted to grow or remain upon any part of a Lot and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain upon any part of a Lot, including vacant parcels. No Owner shall allow the grass on its Lot to grow to a height in excess of six (6) inches, measured from the surface of the ground. This provision shall not apply to the Developer until the last Lot is sold to an Owner other than the Developer.

4. Temporary Structures. No structure of a temporary character, trailer, basement, tent or shack shall be used at any time as residence either temporarily or permanently with the exception of a sales trailer during sale of homes under construction. No storage building of any type shall be permitted unless such building is designed as part of the main residential structure and, approved by the ARC.
5. Lighting. All exterior lighting of Dwellings shall be in character and keeping with the general Subdivision. Yard lighting shall be such that it does not shine toward and/or disturb adjoining land Owners.
6. Mailboxes. Each Lot shall have a decorative mailbox which shall be of a design as shall be proscribed by the ARC (all such mailboxes shall match throughout the Subdivision). Each Owner will be required to keep such mailbox in working order and repair.
7. Swimming Pools. No swimming pool shall be constructed, placed, altered or maintained upon any Lot without the prior written approval of the ARC of the type, design and location thereof, Any such swimming pool must be also constructed, equipped and maintained in accordance with the county and state authorities. All swimming pools must be properly screened for safety and privacy from adjoining Dwellings.
8. Satellite Receiving Dish. No satellite receiving dish or antenna system of any kind shall be located on any Lot, home or building within the Subdivision except that a satellite receiving dish not greater than 18" in diameter may be installed in a location not visible from any street with the prior express, written permission of the ARC.
9. Signs. No sign of any kind shall be displayed to the public view on any Lot or Dwelling except the temporary professional sign of not more than six (6) square feet, advertising the Lot or Dwelling for sale or rent, or signs used by a General Contractor to advertise during the construction and sales period. All signs shall comply with any design specifications adopted by the ARC. No signs shall be nailed to trees. This provision shall not apply to the Developer so long as it owns any Lots..
10. HVAC Equipment.

(a) Outside air conditioning units may not be located in the front yard or any required side yard or corner lots. No window air conditioning units shall be permitted.

(b) No plumbing or heating vent shall be placed on the front side of the roof.

11. Storage of Boats, Trailers and Other Vehicles. No motor homes, boats or other water vehicles of any kind, trailers, or service trucks or service vans can be parked or stored in any location that can, be seen from the street for a period in excess of 48 hours. No wrecked automobiles, disabled automobiles or vehicles other than operating vehicles shall be stored or located on any Lot.

12. Fences. The only fencing permitted shall be wooded, decorative wrought iron, or vinyl not greater than six feet (6) in height on interior lots, except with regard to maintenance areas within the Common Area and fences (if any) erected by Developer. No fences shall be allowed in front yards. Electric fences shall not be permitted (other than invisible pet fencing). The type of materials utilized for (including the color thereof) and the location of all fences must be approved by the ARC. No fence shall be closer to the street than the rear wall of the home without ARC approval. All fencing on corner lots must be specifically approved by the ARC prior to installation.

13. Outdoor Furniture. Recreational Facilities and Clotheslines.

(a) No furniture shall be placed, kept, installed, maintained or located in or on the front or side yards or areas of a Lot or Dwelling. Any furniture placed, kept, installed, maintained or located at the rear of or behind a Dwelling shall, to the greatest extent practicable, be located so that the same shall not be visible from any street.

(b) Wood piles shall be located only at the rear of a Dwelling and shall be screened by appropriate landscaping from view from streets and, to the extent practicable, from adjacent Lots and Dwellings.

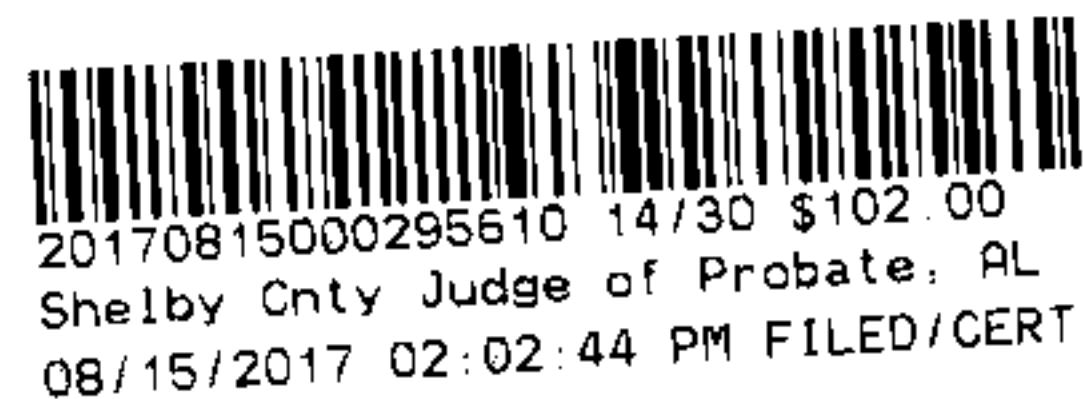
(c) Children's toys, swing sets, jungle gyms, trampolines and other outdoor and recreational equipment and appurtenances shall be allowed only at the rear or behind a Dwelling and shall, to the extent practicable, be located so that the same are not visible from any Street.

(d) Free-standing playhouses and treehouses shall be permitted but only after ARC approval of the same.

(e) The location of basketball backboards must be approved by the ARC. Basketball goal backboards should be of clear plexiglass or acrylic.

(f) Outside clotheslines or other outside facilities for drying or airing clothes shall be prohibited on any Lot or Dwelling. No clothing, rugs or other items shall be hung, placed or allowed to remain on any railing, fence or wall.

(g) Barbecue grills or other types of outdoor cooking equipment and apparatus shall be located only at the rear of a Dwelling and, to the extent practicable, shall not be visible from the street.





(h) Except as otherwise approved by the ARC, bird feeders, wood carvings, plaques and other types of homecraft shall not or be permitted in the front or side yards of any Lot or Dwelling nor shall any of the foregoing items be attached to the front or side of any Dwelling. Except as otherwise approved by the ARC, all bird feeders, wood carvings, plaques and other types of homecrafts shall be located only at the rear of a Dwelling and shall not be visible from any street.

(1) No bird baths, fountains, reflectors, statutes, lawn sculptures, lawn furnishings, artificial plants, bird houses or other fixtures and accessories shall be placed or installed within the front or side yards of any Lot or Dwelling without the prior approval of the ARC.

4.7 Variances. The ARC, in its discretion, shall have the authority to modify the requirements of the Protective Covenants upon the request for a variance from such requirements by an Owner with respect to its Lot. If the Committee grants a requested variance, the nonconforming improvements subject to said request shall not be deemed to be in violation of the Protective Covenants. The granting or denial of a request for variance shall be in writing and shall not be binding on the Committee, nor shall it have any precedential value, on any further variance requests by the Owner or another Owner.

4.8 Additional Remedies. In addition to any other remedies set forth in this Declaration, in the event any of the provisions of this Article IV or any other provisions of this Declaration or any rules and regulations promulgated by the ARC or the Association hereunder are breached or are not otherwise being complied with in all respects by any Owner or Occupant or the respective family members, guests, invitees, agents, employees or contractors of any Owner or Occupant, then the Association shall have the right, at its option, (subject to any applicable notice and/or cure periods expressly set forth herein) to do any or all of the following: (a) deny a contractor access to the subject Lot or Dwelling until the Owner, Occupant, or contractor submits a plan for correction of the violation that is approved by the ARC and the Association and undertakes to cure such violation in accordance with the approved plan, (b) require the cessation of any further construction on any Lot or Dwelling until any work in place which does not comply with the plans and specifications approved by the ARC and the Association for such improvements is removed or corrected, and/or (c) through its designated agents, employees, representatives and independent contractors, enter upon such Lot or Dwelling and take all action necessary to cure such violation or breach. All costs and expenses incurred by the Association in enforcing any of the provisions of this Article, including, without limitation, attorneys' fees, court costs, costs and expenses of witnesses, engineers, architects, contractors, designers, land planners and any other persons involved in the correction of nonconforming work, the completion of uncompleted work or in any judicial proceeding, together with any other costs or expenses incurred by the Association in causing any Owner or such Owner's contractors, agents or invitees to comply with the terms and provisions of this Article shall be paid by such Owner as an Individual Assessment, and if the same is not paid when due, shall bear interest and shall be subject to the lien provided for herein and shall be subject to foreclosure as provided herein. Notwithstanding anything provided herein to the contrary, the rights and remedies of the Association set forth herein shall not be deemed exclusive of any other rights and remedies which the ARC or the Association may exercise at law or in equity or any other enforcement rights specified in this Declaration.

## ARTICLE V RESTRICTIONS

5.1 Use Restrictions. The Property will be used for residential purposes only, and no trade or business purposes (other than home offices to be approved by the ARC and subject to any restrictions and limitations as the ARC may reasonably request), including all types of home industry, will be permitted. No building or structure other than a Dwelling shall be erected on any Lot within the Property except as otherwise permitted herein. Prohibited uses include, but are not limited to:

(a) dangerous, noxious, offensive or excessively noisome activities which may be or become an annoyance or nuisance to Owners;

(b) raising, breeding, or keeping of any animals, birds, or fowl; provided that an Owner shall be permitted to keep not more than two dogs (2) and/or cats as domestic pets on a single Lot and provided further that the ARC may approve more animals to be kept as domestic pets on a Lot if such animals are to be kept in an enclosed area approved by the ARC;

(c) exploring, mining, boring, quarrying, drilling or otherwise removing oil or other hydrocarbons, minerals, gravel or natural gas; and


(d) use of a Dwelling by more than a Single Family Unit,

Any Owner may request from the ARC at any time a determination of whether a prospective use of a Lot is permitted. A certificate to that effect signed by a member of the ARC shall be deemed to be dispositive of this issue.

5.2 Storm Drains. Developer has installed, or will cause to be installed, pipes, swales, headwalls, flumes, surface inlets and other structures necessary for proper control of storm drainage and runoff. Owners shall not alter, modify, or in any way interfere with the functionality of these structures. Additionally, Owners shall not allow debris, grass clippings, or any other items to impede the function of the drainage structure and shall maintain the same.

5.3 Common Area. The Developer shall deed to the Association, the title to the Common Areas as shown on the Subdivision Record Map for the benefit and use of the Owners. The conveyance to the Association is made upon the condition that the Association takes control of the Common Areas, assesses the Common Areas in the name of the Association for tax purposes, improves and maintains the Common Areas and obtains and maintains liability insurance coverage on the Common Areas in the name of the Association.

5.4 Tenants. It shall be the responsibility of each Owner to insure that any tenant of any Lot or portion thereof which is owned by him receives a copy of these Protective Covenants and that every lease utilized by such Owner contains a provision therein stating that every tenancy is subject to all of the terms and provisions of this Declaration. The Owner shall remain liable for the performance and observation of all terms and conditions in this Declaration and for all costs of enforcing the same.

  
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5.5 Enforcement. If a determination is made by the ARC that any of the restrictions in this Article V or the ARC Guidelines are being or have been violated upon any Lot, then the ARC shall so notify the Owner in writing, specifying the violation. If within fifteen (15) days from such notification, the ARC shall make a second determination that sufficient progress has not been made to remedy the violation, the ARC may itself, direct such actions to be taken as shall be necessary or appropriate to remedy such violation, including, without limitation, those remedies set forth in Section 4.7 herein. The Owner shall be liable for the cost and expense of all such actions, including legal fees, and the ARC may treat all such costs and expenses therefore as a charge which shall become an appropriate proceeding at law or in equity.

5.6 Model Homes. Developer shall have the right to construct or allow others to construct and maintain one or more model homes on the Property during the Control Period, and to furnish and decorate same to show it and hold open houses as it in its discretion may determine.

5.7 Buffer Areas. Any Owner who accepts title to its Lot subject to a landscape or planted "buffer area" as shown on the recorded plat for such Lot, will maintain such area solely as a planted buffer area as intended by the Plat and as prescribed by the ARC. No buffered area may be altered without the approval of the Architecture Committee (routine maintenance of such buffer area excluded). The Owner of such Lot shall be responsible for the maintenance of such buffer area, at such Owner's sole cost and expense.


5.8 Stormwater System Maintenance Plan. A portion of the roads and the stormwater system within the Property constitute Common Areas and, as such, will be owned and maintained by the Association. Certain maintenance items are required to prevent the malfunctioning of this stormwater system. At a minimum, the maintenance and inspection listed below shall be performed by the Association (or its designated representative):

(a) Daily Operations:

(i) No Owner or Occupant shall deposit or place by any means into the stormwater system any item that would tend to block or obstruct the stormwater system. No Owner or Occupant shall place items in gutters, streets, ditches, or swales that could wash into the stormwater system.

(ii) Blockage of inlets can cause local flooding which would be a safety hazard. Common items that cause this type of problem are, blowing or raking leaves or other landscaping debris into inlets or gutters where the debris can wash into inlets, and placing garbage bags or can in gutters where flowing water can wash these items downstream and into inlets or block inlets. The foregoing are strictly prohibited.

(iii) The outlet structure for all detention ponds shall be kept free of debris and trash at all times. The outlet structures for all detention ponds shall be inspected before and after each rainfall event, with all trash and debris removed.

  
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(b) Monthly Inspections and Maintenance Items:

(i) The Association will inspect all inlets, manholes, junction boxes, headwalls, ditches, swales and other drainage structures and features on a monthly basis and will remove any debris, rocks, silt, etc. found during inspection. WARNING: MANHOLES, JUNCTION BOXES, PIPES, ETC. ARE CONSIDERED CONFINED SPACES AND MAY CONTAIN CERTAIN GASSES OR OTHER DANGERS WHICH COULD CAUSE INJURY OR DEATH. ONLY PERSONS PROPERLY TRAINED AND EQUIPPED TO WORK IN CONFINED SPACES SHALL ENTER THESE AREAS AND SHALL COMPLY WITH ALL LAWS AND INDUSTRY STANDARDS WHEN DOING SO.

(ii) The Association will inspect the riprap at the emergency spillway of the detention pond on a monthly basis.

(iii) The Association will inspect the outlet of the detention/retention pond for any cracks, settlement, damage or erosion on a monthly basis. In the event any cracks, settlement, damage or erosion is detected, the Association shall retain a Professional Engineer to inspect and make recommendations for repair of these structures, if the same is required by any governmental authority.

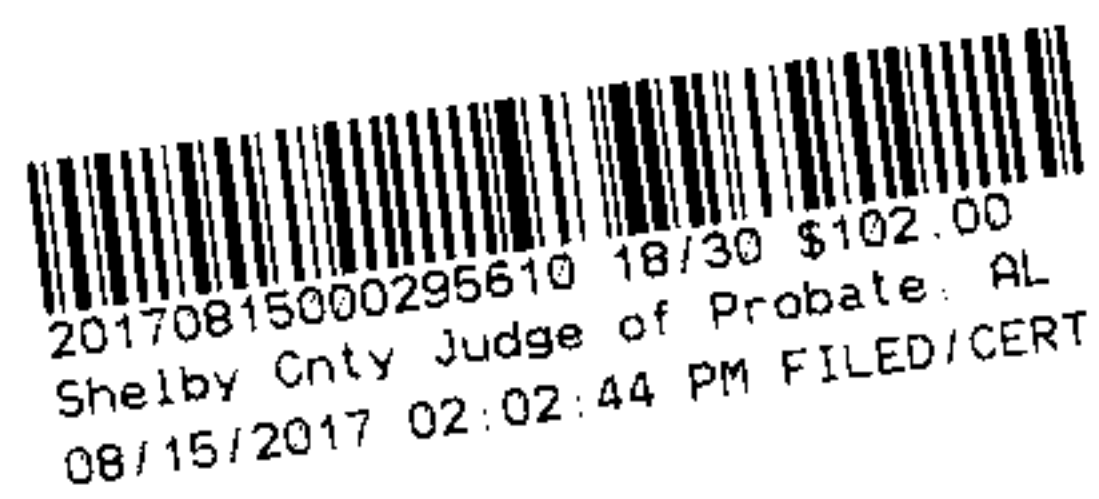
(iv) The Association will inspect the detention/retention pond basin for excessive sedimentation on a monthly basis. Sediment shall be removed to approximately the original ground level. Care should be taken not to disturb any part of the pond basin not impacted by silt deposits. Erosion control shall be required per current ADEM standards while performing this work.

(v) The Association will inspect the site for any erosion or washes, especially slopes around the site which may be prone to erosion if the vegetation cover is lost or in exceptionally heavy rainfall events, on a monthly basis.

(c) Further Maintenance Items:

(i) Inspection of the detention/retention ponds shall not only occur at the monthly intervals, but also after any major rainfall event. Inspection shall be as stated above under "Monthly Inspections and Maintenance Items" with the same course of action taken if cracks, settlement, damage or erosion is detected.

5.9 Additional Restrictions. Additional restrictions may be contained in the ARC Guidelines and each Owner shall be subject to the terms and conditions thereof.






## ARTICLE VI COVENANT FOR ASSESSMENTS

6.1 Affirmative Covenant to Pay Assessments. Each Owner, by acceptance of a deed for a Lot, whether or not it should be so expressed in such deed, shall be obligated and hereby covenants and agrees to pay to the Association. (or to an independent entity or agency which may be designated by the Association to receive such monies), in the manner set forth herein: (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 or Occupant's failure to comply with the terms of these Protective Covenants. Lots owned by the Developer shall not be subject to any Assessment by the Association, be it Annual, Special or Individual Assessments. The Annual, Special and Individual Assessments, together with interest, late charges, costs and reasonable attorneys' 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 attorneys' 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, but shall not constitute a charge or lien upon the Lot against which the Assessment is made. The above notwithstanding, assessments shall not be assessed against a Lot until it has been improved with a single-family residence and conveyed to a person who will, individually or through tenants or assigns, occupy that residence.

6.2 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the preservation of the appearance, value and amenities of the Property, and in particular for the improvement, preservation, maintenance and administration of the Common Areas (including, without limitation, the payment of Common Expenses under Article VII below) and of any easement in favor of the Association and/or the Owners/Occupants, as well as for such other purposes as are properly undertaken by the Association. No profit, gain, or other benefit is to be derived by the Association from the Assessments, but, instead, such funds shall be expended only as agent for the Owners, and no part of the net earnings of the Association shall inure (other than by acquiring, constructing or providing management, maintenance, and care of the Common Areas) to the benefit of any individual.

6.3 Individual Assessment. Any expenses incurred by the Association in enforcing any of the provisions of these Protective Covenants against any specific Owner or Occupant shall be deemed an Individual Assessment against such Owner and the respective Lot owned by such Owner. Such Individual Assessment shall be levied by the Association and shall be specified in a notice to the Owner, which notice shall also specify the due date for payment of the same.

6.4 Annual Assessments. The Association shall levy Annual Assessments in such amounts as are necessary to meet the Common Expenses (as defined in Article VII below) and such other recurring or projected expenses as the Board of Directors of the Association may deem appropriate. The Annual Assessment for the Development shall commence on January 1 of each year, and shall be paid in advance.

  
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6.5 Special Assessments. In addition to the Annual Assessments specified in Section 6.4 above, the Association may levy, at any time, one or more Special Assessments 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 Areas, 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 at a meeting duly called for this purpose, and (b) to the extent Developer is the Owner of any Lot in the Development, the approval of Developer.


6.6 Special Meeting. Written notice of any meeting called for the purpose of taking any action authorized under Section 6.5 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 of Owners, either in person or by proxy, entitled to cast 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 percent (1/2%) of the required quorum at the preceding meeting.

6.7 Amount of Assessments. Both Annual and Special Assessments must be fixed at a uniform rate for all Lots, shall commence when such Lot is improved with a completed Dwelling, 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).

6.8 Certificate. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer or agent of the Association setting forth whether the Assessment on a Lot has been paid. A properly executed certification of the Association as the status of the Assessment on a Lot is binding upon the Association as of the date of its issuance.

6.9 Effect of Non-Payment of Assessments; Liens; Remedies. 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 eighteen percent (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 at law or in equity, the Association, acting through its 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 include the late charge and interest specified above as well as all attorneys' fees, court costs and all other costs and expenses paid or incurred by the Association in connection therewith; and/or

  
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(b) The Association may enforce the lien created pursuant to Section 6.1 above as hereinafter provided. The lien created pursuant to Section 6.1 above shall secure the 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 the 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 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 shall be filed for record in the Office of Judge of Probate of Shelby County, Alabama. The lien provided for herein shall be in favor 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 amount 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 waive or otherwise be exempt from the liability to pay the Assessments provided herein.

6.10 Lien Subordinate to Mortgages. The lien for Assessments and other charges provided for herein with respect to any Lot shall be subordinate to the lien of any first Mortgage encumbering such Lot. No Mortgagee shall be required to collect Assessments on behalf of any Owner. 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 mortgage foreclosure or any similar proceedings shall extinguish the lien of such assessment as to payments which became due more than six (6) months prior to such sale or transfer.

6.11 Damages. In addition to the rights and remedies set forth above, if any Owner or Occupant (or any Owner's or Occupant's 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 ARC, or any Member thereof, 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 ARC, 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 6.9(b) above. The failure of Developer, the Association or the ARC to institute proceedings for any one (1) or more violations of these Protective Covenants shall not constitute approval of the same of be

construed as a waiver of any right of action contained herein for past or future violations of said covenants and restrictions.

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

- (a) As an easement or other interest therein dedicated and accepted by the local public authority and devoted to public use;
- (b) As a Common Area,
- (c) As Property exempted from ad valorem taxation by the laws of the State of Alabama, to the extent agreed to by the Association.

## ARTICLE VII COMMON AREA EXPENSES

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

- (a) Maintenance and Repair of Common Areas:
    - (i) The cost and expense to keep and maintain the Common Areas in good and substantial repair and in a clean and attractive condition, if any, including the charges in Section 6.5 of this Declaration, as well as the following charges:
    - (ii) Any electrical costs to run all common lighting and any other electrical device necessary to the Common Areas;
    - (iii) Sanitary sewer and storm sewer lines within private drives;
    - (iv) Gas bills of the Association, if any;
    - (v) Water bills and sprinkler systems for use on the Common Areas;
    - (vi) Any insurance for the Common Areas;
    - (vii) Any management fees, accounting fees, and legal expenses incurred by the Association;
    - (viii) Any and all other property deeded to the Association by the Developer;
- and





(ix) Such other matters which involve the use of the Common Areas as determined by the Association.

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

(c) Property Taxes. All ad valorem taxes and other Assessments relating and connected to the Common Areas, if any.

(d) Insurance:

(i) Fidelity and Directors' Insurance covering all directors, officers and employees of the Association and all managing agents who handle Association funds, if any;


(ii) Adequate property and casualty insurance for the benefit of the Association insuring all insurable improvements in and to the Common Areas against loss or damage by fire or other hazards, including, without limitation, extended coverage, flood, vandalism and malicious mischief, which coverage shall be in an amount, with such insurance carriers, at such costs and with such deductibles as the Association may determine;

(iii) Public liability insurance coverage covering all of the Common Areas and any damage or injury caused by the negligence of the Association and all members, directors, officers, partners, agents and employees thereof, in such amounts, with such insurance carriers, at such costs and with such deductibles as the Association may determine;

(iv) If applicable, worker's compensation insurance, employer's liability insurance and all other types of insurance required by law, including, without limitation, errors and omissions insurance coverage, in such amounts, with such insurance carriers, at such costs and with such deductibles as the Association may determine; and

(v) All insurance coverage authorized hereunder shall be written in the name of the Association. To the extent the same may be obtained at a nominal cost, all such policies shall contain a waiver of subrogation clause pursuant to which the insurer waives any claims against the Association, and the Owners, Occupants and the family members, servants, agents, and guests of the Owners and/or Occupants.

7.2 Reserves. The Association may establish reserves for the payment of Common Expenses in the future.

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

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


## **ARTICLE VIII**

### **NATURE OF PROTECTIVE COVENANTS.DEFAULTS AND REMEDIES**

8.1 Protective Covenants Running with the Land. The foregoing Protective Covenants shall constitute a servitude in and upon the Property and shall run with the Property and inure to the benefit of and be enforceable by the Developer, its designated successors and assigns, or by any Owner and its respective heirs, successors and assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which time the said Protective Covenants shall automatically be extended for successive period of ten (10) years. unless an agreement which has been signed by Owners who own two-thirds (2/3) or more of the then existing Lots of the Property, agreeing to terminate or modify this Declaration, has been recorded in the Office of Judge of Probate of Shelby County, Alabama.

8.2 Remedies for Default. The existence of any default hereunder by any person or entity subject to the terms, conditions, covenants and restrictions of this Declaration shall give the Developer, its successors or assigns, any Owner, and/or their respective heirs, successors and assigns, in addition to all other remedies specified therein, the right to proceed at law or in equity to compel compliance with the terms of these Protective Covenants and to prevent the violation or breach of any of them; provided, this Declaration shall be recorded for the benefit of the Developer, the ARC, the Association, the Owners and their respective Mortgagees, and the Occupants, and by such recording, no other adjoining property owner or third party shall have any right, title or interest whatsoever in the Property or its operation and continuation, in the enforcement of any of the provisions of this Declaration or the right to consent to or approve any amendment or modification to this Declaration.

8.3 Nature of Remedies: Waiver. All rights, remedies and privileges granted to the Developer, the ARC, the Association, the Owners, their respective heirs, successors and assigns, and the Occupants pursuant to the provisions of this Declaration shall be deemed to be cumulative, and the exercise of any one or more of them shall not be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same, or any other party, from pursuing such other and/or additional rights, remedies or privileges as may be available to such party at law or in equity. The failure at any point in time to enforce any covenant or restriction shall in no event be deemed a waiver of the right thereafter to enforce any such covenant or restriction.

  
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8.4 No Reverter. No restriction or provision herein is intended to be, or shall be construed as, a condition subsequent or as creating any possibility of a reverter.

## **ARTICLE IX FUNCTION OF ASSOCIATION**

9.1 Name. The name of the Association for the Property is Dearing Farms Homeowners' Association, Inc., which shall be incorporated as a nonprofit corporation.

9.2 Maintenance Responsibilities. The Association may, at any time, in the discretion of the Board, without any approval of the Members being required:

(a) Maintain, install, reinstall, construct and repair all of the improvements within the Common Areas, to include plantings and shrubbery, and to maintain, repair and operate any other easement area shown on the Subdivision Record Map which is not under the control or management of a public utility or governmental authority;

(b) Maintain and manage the Common Areas shown on the Subdivision Record Map so as to preserve the Common Areas in their improved state and prevent any unlawful or obnoxious activity to be conducted thereon;

(c) Replace injured and diseased trees or other cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes; and

(d) Do all such other acts which the Board deems necessary to preserve and protect the Property and the beauty thereof, in accordance with the general purposes specified in this Declaration.


9.3 Other Rights of Association. The Board shall have the right to provide services, the cost of which shall be paid out of the charges provided for in Article VII hereof, and adopt rules, regulations, procedures and policies with respect to:

(a) garbage and trash collection and removal;

(b) motor vehicle operation;

(c) parking of motor vehicles on streets or roads in the Property; and


(d) such other matters including the general welfare of the Property as a whole.

  
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## ARTICLE X AMENDMENT OF DECLARATION

10.1 Amendment by Association. During the Control Period, this Declaration may be amended by the Developer in Developer's sole discretion. Following the expiration of the Control Period, an amendment to this Declaration may be proposed by written instruction signed by the Owners of not less than one-fourth (1/4) of the Lots within the Property. Such proposed amendment or amendments shall be considered at a meeting of the Owners after written or printed notice of such meeting, stating the time and place thereof, and reciting the proposed amendment or amendments in reasonably detailed form, shall be mailed to the Owners not less than ten (10) days nor more than thirty (30) days, before the date set for such meeting. If mailed, such notice shall be deemed to be properly given when deposited in the United States mail, addressed to each Owner at the Street address of its Lot, the postage thereon being prepaid. Any Owner may, by written waiver of notice signed by such Owner, waive such notice, and such waiver whether before or after the holding of the meeting, shall be deemed equivalent to the giving of such notice to such Owner. At such meeting, the amendment or amendments proposed must be approved by the affirmative vote of Owners who own not less than two-thirds (2/3) of the total Lots of the Property in order for such amendment or amendments to become effective. Thereupon, such amendment or amendments to the Declaration shall be transcribed and certified by the ARC as having been duly adopted and the original or executed copy of such amendment or amendments so certified and executed with the same formalities as a deed shall be recorded in the Office of Judge of Probate of Shelby County, Alabama, within twenty (20) days from the date on which the same became effective, such amendment or amendments to specifically refer to the recording identifying the Declaration. Thereafter, a copy of said amendment or amendments, in the form in which the same were placed of record, shall be delivered to all of the Owners, but mailing or delivering a copy thereof shall not be condition precedent to the effectiveness of such amendment or amendments. At any meeting held to consider such amendment or amendments, the written vote of any Owner shall be recognized if such Owner is not in attendance at such meeting or represented thereat by proxy, provided such written vote is delivered at or prior to such meeting.

10.2 Scrivener's Error. Notwithstanding the foregoing amendment provisions, any scrivener's error omission may be corrected by the filing of any amendment to this Declaration consented to by Developer and any Owners or Mortgagees of record directly affected by the amendment. No other Owner is required to consent to any such amendment. If there appears to be any other omissions or errors in this Declaration, scrivener's or otherwise, and such error or omission does not materially adversely affect the rights and interests of any other party, then such error or omission may be corrected by the filing of an amendment of this Declaration executed by the Developer without the consent of any other party.

  
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## **ARTICLE XI CONTROL PERIOD**

11.1 Developer Control. In view of the Developer's financial commitment to the Subdivision, Developer's obligations as an initial owner of the Lots to pay the expenses of the Subdivision and Developer's obligations and Developer's need to insure the success of the Subdivision, Developer hereby reserves unto itself; its successors and assigns, the right to manage all of the affairs of the Subdivision and all decisions of the Association, the exclusive right to elect the directors of the Association and members of the Architectural Committee (who need not be Owners) and the right to amend the Bylaws of the Association until the sale of all Lots within the Subdivision, or until the Developer elects to terminate its control of the Subdivision, whichever shall first occur. This period of time shall be known as the "Control Period." Developer may terminate its management rights and responsibilities, or any portion thereof, by relinquishing control of the Association in writing to the Owners at any time prior to the expiration of said Control Period. The Developer shall have the sole and exclusive right to take all actions and do all things on behalf of the Association. During the Control Period, Developer shall pay all expenses otherwise payable by the Association and as reimbursement thereof and as compensation for its management services, Developer shall be entitled to be reimbursed for such expenses out of the Assessments payable by the Owners during the Control Period, and Developer shall have all of the rights of the Association to levy and enforce payment of Assessments. At the termination of the Control Period and the assumption of the operation of the Association by the Members, Developer shall render an accounting of income and expenses incurred during said Control Period to the Owners. In the event that there is any conflict in the provisions of this Article and the other provisions contained in this Declaration, the Articles or the Bylaws, the provisions of this Article shall govern and prevail.

## **ARTICLE XII PRIVATE SEWER SYSTEM**

Each Owner of a Lot acknowledges by acceptance of a deed to said Lot that the Owner is required to connect to the onsite sewer system and will be responsible for paying all assessed fees related to such connection.

In addition, some of the Lots in the Subdivision will require installation, connection to and maintenance of a residential grinder pump system. In forming the Association, it is the intention of Developer for the Association to enter into an Agreement with Southwest Water Alabama On Site System Services, Inc. (hereinafter "SWWC"), its successors and assigns, whereby SWWC will manage and maintain the grinder pump system and that associated costs with such management and maintenance will be assessed to the Association. Therefore, upon such Agreement being executed by all appropriate parties, the Association will thereafter be responsible for paying all assessed fees according to the terms of said Agreement and that the Developer in forming the Association took into account estimated costs for such assessment in determining annual Association dues from all Lot Owners in the subdivision.

  
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## ARTICLE XIII GENERAL PROVISIONS

13.1 Deeds to Reference Covenants. Each deed for the sale of a Lot in the Subdivision will be subject to the terms and conditions of this Declaration and the said Deed will contain a reference to those Covenants and that Sections 1.10 and 11.1 contained herein cannot and will not be amended by action of the Association.

13.2 Obligation of Owner to Build or Restore.

(a) Each Owner of an unimproved Lot shall commence construction of a Dwelling in accordance with the requirements herein set forth on or before the expiration of two (2) years from the date of conveyance of such Lot to the Owner, and shall complete the construction of such Dwelling on or before the expiration date of one (1) year from the commencement of construction, but in no event later than three (3) years from the date of conveyance of said Lot, except by written, approval of the ARC Control Committee.

(b) In the event a 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 (1) year from the date of such damage or destruction and such repair or replacement of such structure shall be in accordance with the covenants and restriction set forth in this Declaration. Further, all debris resulting from such damage or destruction must be removed and the Lot restored to a sightly condition with reasonable promptness, but not later than ninety (90) days after such damage or destruction.

13.3 Indemnity for Damages. Each and every Owner and future Owner, in accepting a deed or contract for any lot subject to this Declaration, agrees to indemnify Developer for any damage caused by such Owner, or the contractor, agent or employee or such Owner, to roads, streets, gutters, walkways or other aspects of public ways, including all surfacing thereon, or to water drainage or storm sewer lines, or sanitary sewer lines owned by the Developer, or for which Developer has responsibilities at the time of such damage. Upon the purchase of any Lot within said Property by any said land owner, said owner accepts his/her knowledge of this Declaration, and ratifies the covenants contained herein and thus releases his/her right to prosecute Developer for the inconveniences said lot owner deems inadequate or unbecoming of said lot owner's needs.

13.4 No Trespass. Whenever the Association, Developer, the ARC and their respective agents, employees, representatives, successors and assigns, are permitted by this Declaration to enter upon or correct, repair, clean, maintain or preserve or do any other action within any portion of a Lot or Dwelling, the entering thereon and the taking of such action shall not be deemed a trespass.

13.5 Notices. Any notice required to be sent to any Owner under the provisions of this declaration shall be deemed to have been properly sent when mailed by United States mail, postage prepaid, return receipt requested, to the street address of the Lot owned by such Owner.

13.6 Severability. Invalidation of any provision(s) hereof by judgment or court order shall in no way affect any other provisions, all of which shall remain in full force and effect.



13.7 Governing Law. Should any dispute or litigation arise between any of the parties whose rights or duties are affected or determined by this Declaration as the same may be amended from time to time, said dispute or litigation shall be governed by the laws of the State of Alabama.

13.8 Captions. The captions and titles of the various articles and Sections in this Declaration are for convenience of reference only, and in no way define, limit or describe the scope or intent of this Declaration.


13.9 Usage. Whenever used herein the singular shall include the plural and the singular, and the use of any gender shall include all genders.

13.10 Conflict. If any irreconcilable conflict shall exist, or hereafter arise, with respect to the interpretation of any provisions of this Declaration, and any covenant of a Lot, then the provisions of this Declaration shall prevail.


13.11 Effective Date. This Declaration shall become effective upon its recordation in the Office of Judge of Probate of Shelby County, Alabama.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals on this 15<sup>th</sup> day of August, 2017.

**DEARING FARMS - HELENA, LLC**

/s/   
By: **Ryan C. Medo**  
Its: **Managing Member**

**(NOTARY ACKNOWLEDGMENT ON FOLLOWING PAGE)**

  
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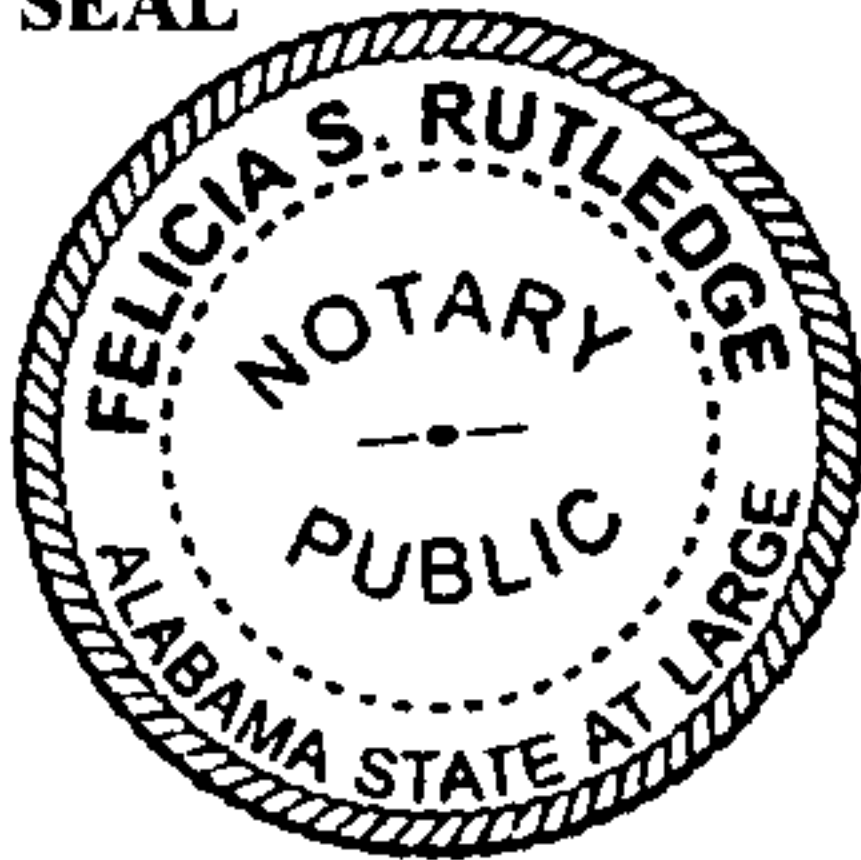
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I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Ryan C. Medo, whose name as Managing Member of Dearing Farms - Helena, LLC, an Alabama Limited Liability Company, is signed to the foregoing instrument and who is known to me, acknowledged before me that, being informed of the contents of the instrument, he, as such Managing Member, and with full authority, executed the same voluntarily for and as the act of said Limited Liability Company, on the day the same bears date.

Given under my hand and official seal, this the 15<sup>th</sup> day of August, 2017.

SEAL



Felicia S. Rutledge  
Notary Public

My Commission Expires: 07/07/2019

**THIS INSTRUMENT PREPARED BY:**

**Tommy B. Majors IV, Esq.**  
**The Majors Law Firm**  
**4320 Eagle Point Pkwy**  
**Birmingham, AL 35242**



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