

CITY OF VESTAVIA HILLS
PLANNING AND ZONING COMMISSION

AGENDA

JANUARY 14, 2021

6:00 P.M.

Roll Call.

Pledge of Allegiance

Approval of Minutes: December 10, 2020

Rezoning/Conditional Use Recommendations

Annexations

- (1) **P-0121-03** Round Too Investments, LLC Is Requesting **Rezoning** For **2810 Five Oaks Ln.** from **Jefferson County E-2 to Vestavia Hills R-2** For The Purpose Of Annexation.

Annexations/Compatible Rezoning

- (2) **P-0121-01** Earl & Juanita Tew Are Requesting **Rezoning** For **2519 Dolly Ridge Rd.** from **Jefferson County E-2 to Vestavia Hills R-1** For The Purpose Of Annexation.
- (3) **P-0121-02** Glenda Mortenson Is Requesting **Rezoning** For **2537 Tyler Rd.** from **Jefferson County R-1 to Vestavia Hills R-2** For The Purpose Of Annexation.
- (4) **P-0121-04** Mitchell & Amanda Marcum Is Requesting **Rezoning** For **3643 Altadena Dr.** from **Jefferson County E-1 to Vestavia Hills E-2** For The Purpose Of Annexation.

CITY OF VESTAVIA HILLS
PLANNING AND ZONING COMMISSION
MINUTES
DECEMBER 10, 2020

6:00 P.M.

The Planning & Zoning Commission of Vestavia Hills met in regular session on this date at 6:00 PM, following publication and posting pursuant to Alabama law. Due to the COVID-19 pandemic, in coordination with a Proclamation from Governor Ivey and pursuant to orders from the Jefferson County Health Department Official requiring social distancing along with limits of attendees, this meeting was held with a portion of the Commission digitally attending the meeting via remote computer locations utilizing a Zoom.com application. Staff and general public/audience members also were invited to attend via Zoom.com following publication pursuant to Alabama law. Chairman Barnes called the meeting to order and the City Planner called the roll with the following:

MEMBERS PRESENT:

Lyle Larson, Acting Chair
Erica Barnes*, Chair
Jonathan Romeo*
Hasting Sykes*
Ryan Ferrell*
Mike Vercher*
David Maluff
Rusty Weaver*

MEMBERS ABSENT:

Cheryl Cobb*

OTHER OFFICIALS PRESENT:

Conrad Garrison, City Planner
Christopher Brady, City Engineer

**Member present via Zoom*

APPROVAL OF MINUTES

Ms. Barnes stated that the minutes of the meeting November 12, 2020 are presented for approval.

MOTION Motion to approve minutes was made by Mr. Weaver and second was by Ms. Barnes Voice vote as follows:

Mr. Vercher – yes
Mr. Romeo – yes
Mr. Sykes – yes
Ms. Barnes – yes
Motion Carried.

Mr. Ferrell– yes
Mr. Maluff – yes
Mr. Weaver – yes
Mr. Larson – yes

Rezoning/Conditional Use Recommendations

(1) **P-1120-35** Scott Thomson Is Requesting **Rezoning** For **3412 Ridgedale Dr.** from **Vestavia Hills R-1 to Vestavia Hills R-9** For The Purpose Of Single Family Development.

Mr. Garrison explained the background of the request. He stated that the request is for four single family houses with a newly created street.

Jason Kessler and Wade Lowery were present to explain the request and answer any questions. The duo went through a PowerPoint presentation to answer questions and concerns from the previous meeting.

Mr. Larson asked how drainage flowed on the site and on Ridgedale Dr. Mr. Lowery stated it drained toward and on the lot.

Mr. Larson asked about buffers for the proposed development. Mr. Kessler stated they would use a combination of berms and fencing.

Mr. Weaver stated that the development could be substantial improvement over current conditions.

Mr. Romeo asked Mr. Lowery if the proposed drainage plan would hurt the area. Mr. Lowery stated it would help.

Mr. Larson opened the floor for a public hearing.

Jack Mize, 2414 Dolly Ridge Rd. was concerned about fencing and buffering.

Scott Thompson spoke in opposition due to traffic concerns.

Kelly Raynor, 3416 Ridgedale Dr. spoke in opposition due to density.

Randy Hancock, 3409 Ridgedale Dr. spoke in opposition due to drainage and road width.

Kent Howard, 2425 Ridgedale Dr. spoke in opposition.

Charles Kessler spoke in support and stated the project would improve property values.

Mr. Larson closed the public hearing.

MOTION Mrs. Barnes made a motion to recommend Rezoning from Vestavia Hills R-1 to Vestavia Hills R-9 for the property located at 3412 Ridgedale Dr. Second was by Mr. Maloof. Motion was carried on a roll call; vote as follows:

Mr. Maloof– yes
Mr. Ferrell – yes
Ms. Vercher – yes
Mrs. Barns – yes
Motion carried.

Mr. Romeo – yes
Mr. Sykes– yes
Mr. Weaver – yes
Mr. Larson – yes

Conrad Garrison, City Planner

CITY OF VESTAVIA HILLS
SYNOPSIS AND STAFF RECOMMENDATION CONCERNING
APPLICATION BEFORE THE PLANNING AND ZONING COMMISSION

Date: **JANUARY 10, 2021**

- **CASE: P-0121-03**
- **REQUESTED ACTION:** Rezoning JC E-2 to Vestavia Hills R-2
- **ADDRESS/LOCATION:** 2810 Five Oaks Ln.
- **APPLICANT/OWNER:** Round Too Investments, LLC
- **GENERAL DISCUSSION:** The request is for annexation and rezoning for property at the corner of Five Oaks Ln. and Caldwell Mill Rd. The request is for an 18 lot subdivision. Seven lots will front Five Oaks Ln. The remaining lots will be accessed off a new street from Caldwell Mill Rd. Lot 18 would be part of the subdivision and subjected to the same covenants but is not part of the annexation and will remain in the County. The northern portion of the property is reserved for drainage detention/retention. Sidewalks would be constructed in front of the proposed lots and a pedestrian bridge is proposed along Caldwell Mill Rd.

City Council began the 90 annexation process with Resolution 5276 in 11/23/20. Compatible annexation would result in an R-1 zoning, however, this proposed zoning is R-2. All proposed lots meet the minimum requirements of R-2. Site plan and proposed covenants are attached.

- **CAHABA HEIGHTS COMMUNITY PLAN:** The property is not contemplated in the Community Plan but is adjacent low-density residential and planned mixed use.
- **STAFF REVIEW AND RECOMMENDATION:**

1. **City Planner Review:** I have looked at all of the relevant zoning / subdivision requirements related to this proposal, including application, notification, setbacks, area of lot development, etc. Notification has been sent to property owners pursuant to Alabama law. I have reviewed this request and find it does meet the minimum requirements of the proposed zoning.

City Planner Recommendation: Staff recommends the following conditions: A. Approval based on site plan presented. B. Rezoning not completed until the final map has been recorded CC&R's for the subdivision that include Lot 18 are recorded,

2. **City Engineer Review:** I have reviewed the application and I have no issues with this request.

3. **City Fire Marshal Review:** I have reviewed the application and I have no issues with this request.
4. **Building Safety Review:** I have reviewed the application and I have no issues with this request.

CITY OF VESTAVIA HILLS

APPLICATION

PLANNING AND ZONING COMMISSION

I. INSTRUCTIONS AND INFORMATION:

- (1) The Vestavia Hills Planning and Zoning Commission meets regularly on the second Thursday of each month at 6:00 PM in Council Chambers at the Municipal Center.
- (2) All materials and information relating to a zoning/rezoning request or conditional use approval before the Planning and Zoning Commission must be submitted to the Office of the City Clerk no later than **25 working days prior to the scheduled meeting at which it shall be considered**. All information relating to Preliminary Map approvals must be submitted to the Office of the City Clerk no later than 20 days prior to the scheduled meeting at which it shall be considered. All information relating to Final Map approvals must be submitted to the Office of the City Clerk no later than 15 days prior to the scheduled meeting at which it is to be considered.
- (3) This application must be filled out in its entirety complete with zip codes.
- (4) All applicable fees shall accompany this application prior to its being considered complete. Fees include an application fee of \$100.00 along with applicable postage per property owner to be notified for Commission meeting. Fees may also include notification fees for City Council meeting and publication fees which will be billed to applicant at a later date. ***No permits will be issued until all fees have been paid.*
- (5) Appropriate plats and maps with proper legal description shall accompany this application. **Please refer to attached checklist.**

II. APPLICANT INFORMATION: (owner of property)

NAME: Round Too Investments, LLC

ADDRESS: 120 Bishop Circle
Pelham, AL 35124

MAILING ADDRESS (if different from above) _____

PHONE NUMBER: Home 205 7904954 Office _____

EMAIL ADDRESS: connor@developmentalabama.com

NAME OF REPRESENTING ATTORNEY/AGENT & CONTACT INFORMATION:

P0121-03//2800341003010.000
2810 Five Oaks Lane
Rezoned to VH R2
Round Too Investments
JCE2

III. ACTION REQUESTED

Request that the above described property be zoned/rezoned

From: Jefferson County E-2

To: Vestavia Hills R-2

For the intended purpose of: Residential (Single Family)

Development - SEE ATTACHED

(Example: From "VH R-1" to "VH O-1" for office building)

if additional information is needed, please attached full description of request

IV. PROPERTY DESCRIPTION: (address, legal, etc.)

SEE ATTACHED

Property size: _____ feet X _____ feet. Acres: 9.26 AC

V. INFORMATION ATTACHED:

Attached Checklist complete with all required information.

Application fees submitted.

VI. I do hereby declare the above statements are true and that I am the owner and myself or my duly appointed representative will be at the scheduled hearing.


Owner Signature/Date

12/7/2020

Representing Agent (if any)/date

Given under my hand and seal
this _____ day of _____, 20____.

Notary Public
My commission expires _____
day of _____, 20____.

The purpose of this request is to rezone property from Jefferson County E-2 to City of Vestavia Hills R-2. The residential lots have been made shorter in depth (lot width is held at 100') in order to accommodate the creation of a green space buffer along the existing stream. This green space will also create a buffer between residents and Altadena Park.

Legal Description:

Part of the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ and part of the SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 34, Township 18 South, Range 2 West, situated in Jefferson County, Alabama, more particularly described as follows:

Begin at the southwest corner of the SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of said Section 34, run thence eastwardly along the south line of said SW $\frac{1}{4}$ of NE $\frac{1}{4}$ for a distance of 550 feet; thence turn an angle to the left of 109 degrees 40' and run northwestwardly for a distance of 808 feet to the center line of a Branch; run thence southwestwardly along the center line of said Branch following its meanderings to intersection with the center line of Caldwell Mill Road; run thence southeastwardly along the center line of said Caldwell Mill Road for a distance of 349.08 feet; thence turn an angle to the left of 7 degrees 18' and run southeastwardly for a distance of 97.33 feet to intersection with the south line of the SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of said Section 34; run thence Eastwardly along the south line of said SE $\frac{1}{4}$ of NW $\frac{1}{4}$ for a distance of 275.62 feet to the point of beginning.

Above descriptions being the same as recorded in instrument number 2020042617 in the Office of the Judge of Probate in Jefferson County, Alabama.

LESS AND EXCEPT

A parcel of land situated in Section 34, Township 18 South, Range 2 West, Jefferson County, Alabama being more particularly described as follows:

BEGIN at a 5/8" rebar capped Weygand at the NW corner of Lot 4-B Resurvey of Part of Lot 4 J Arthur Acton Sub-division and Acreage as recorded in Map Book 233 Page 2 in the Office of the Judge of Probate in Jefferson County, Alabama; thence S 18°12'46" E along the west line of Lot 4-B a distance of 59.81 feet to a point; thence S 67°47'37" W leaving said Lot 4-B a distance of 70.11 feet to a point; thence S 87°02'57" W a distance of 67.56 feet to a point; thence N 1°04'33" E a distance of 147.07 feet to a point; thence N 46°20'37" W a distance of 23.90 feet to a point on a non-tangent curve to the right having a central angle of 146°18'17" and a radius of 50.00 feet, said curve subtended by a chord bearing N 29°29'45" W and a chord distance of 95.71 feet; thence along the arc of said curve a distance of 127.68 feet to a point; thence N 10°39'44" W a distance of 165.77 feet to a point; thence N 55°13'48" E a distance of 98.84 feet to a point on the west line of Lot 3-A of Resurvey of Lot 3 and Part of Lot 4 of J Arthur Acton Sub-Division as recorded in Map Book 210 Page 89 in the Office of the Judge of Probate in Jefferson County, Alabama; thence S 18°12'46" E along the west line of Lot 3-A a distance of 399.34 feet to the POINT OF BEGINNING. Said parcel of land contains 1.04 acres, more or less.



DATE:	JANUARY 6, 2020
DRAWN BY:	CAF
CHECKED BY:	WHL
PROJECT NO.:	HIGHWOOD
CITY:	ALBANY, ALABAMA
PROJECT:	SITE LAYOUT PLAN

PROJECT: FIVE OAKS LANE
 VESTAVIA HILLS, ALABAMA

PROJECT: FIVE OAKS LANE
 VESTAVIA HILLS, ALABAMA

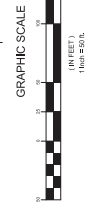
120 BISHOP CIRCLE, SUITE 300
 PELHAM, AL 35124
 TEL - (205) 403-9158
 FAX - (205) 403-9175



ENGINEERING DESIGN GROUP, LLC
 CIVIL ENGINEERING - LAND SURVEYING
 (205) 403-9158

PROJECT NO. 2019-001
 SHEET NO. 18
 C1.0

SITE DATA TABLE	
PROPOSED ZONING:	R-2 MEDIUM DENSITY RESIDENTIAL DISTRICT
MINIMUM LOT WIDTH:	100'
MINIMUM LOT AREA:	15,000 SQ FT
SETBACKS:	
FRONT:	50'
REAR:	30'
SIDE:	15'
ACREAGE TO BE ANNEXED:	0.38 AC
LOTS PROVIDED:	18



STATE OF ALABAMA)
JEFFERSON COUNTY)

DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS

FOR

FIVE OAKS

THIS DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS (the "Declaration") is made as of this ____ day of _____, 2021, by **Five Oaks, LLC**, an Alabama limited liability company, (the "Developer"), which declares that the real property hereinafter described is and shall be subdivided, developed, held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth (the "Declaration").

WHEREAS, Developer has acquired certain real property located in the Jefferson County, Alabama, which Developer proposes to develop into approximately nineteen (19) Lots for residential use with common areas principally consisting of Green Space ("Common Areas") as part of a residential community to be known as **FIVE OAKS** (the "Development"), which property is described on Exhibit "A" attached hereto (the "Property");

WHEREAS, the Developer desires to subject the Property, together with such additions thereto as may hereafter be made (the "Subject Property"), to this Declaration to provide for the development and use of the Subject Property to promote adherence to the Declaration by future owners of the Subject Property, and to promote efficient monitoring and enforcement of the Declaration;

WHEREAS, the Developer further desires to include in the Declaration additional easements, covenants and restrictions for the regulation and use of the Subject Property, including without limitations architectural requirements for the construction of improvements within the Subject Property, easements and restrictions relating to the use of the Subject Property, and covenants for the repair and maintenance of Common Areas within the Subject Property, in order to promote the appearance and value of the Subject Property and for the benefit of the owners of the Subject Property;

WHEREAS, the Developer has created a nonprofit corporation (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 of levying assessments against the owners of the Subject Property to enable the Association to perform such obligations;

NOW, THEREFORE, Developer does hereby declare that all of that certain real property situated in Jefferson County, Alabama, which is more particularly described on Exhibit "A" hereto, shall be held, developed, improved, transferred, sold, conveyed, leased, occupied and used subject to the following easements, covenants, conditions, restrictions, charges, liens and regulations, which shall be binding upon and inure to the benefit of all parties acquiring or having any right, title or interest in any portion of the above described real property.

ARTICLE I
DEFINITIONS

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

1.1 ARC. The term or letters "ARC" shall mean the Architectural Review Committee appointed pursuant to Section 8.2 hereof with the rights and obligations conferred upon such architectural review committee pursuant to this Declaration.

1.2 Architectural Standards. The term "Architectural Standards" shall mean the standards prepared, issued and amended from time to time by the ARC pursuant to Section 8.5 below for the purpose of reviewing and approving all exterior Improvements, landscaping and any other Improvements which may be made to any Lot.

1.3 Assessment. The term "Assessment" shall mean the Assessments to be assessed against the Owners of Lots pursuant to the authority vested in the Association under Article VII and Article VIII hereof, and such term shall include Common Area Assessments and individual Assessments where no distinction is required.

1.4 Association. The term "Association" shall mean Five Oaks Residential Association, Inc., an Alabama nonprofit corporation, that has been organized by filing the Certificate of Formation with the Judge of Probate of Jefferson County, Alabama.

1.5 Board. The term "Board" shall mean and refer to the Board of Directors of the Association and its duly elected successors as may be provided in the Certificate of Formation and Bylaws.

1.6 Building. The term "Building" shall refer to any Improvement on a Lot.

1.7 Bylaws. The term "Bylaws" shall mean and refer to the bylaws of the Association, as the same may be amended from time to time.

1.8 Certificate of Compliance. The term "Certificate of Compliance" shall mean and refer to the certificate issued by the Association pursuant to Section 8.6(j) hereof as prima facie evidence that a Building or other Improvements are in compliance with this Declaration.

1.9 Certificate of Formation. The term "Certificate of Formation" shall mean and refer to the Certificate of Formation of the Association as recorded as Instrument # _____, in the Probate Office of Jefferson County, Alabama, and all amendments thereto.

1.10 Common Areas. The term "Common Areas" shall mean and refer to all real and personal property now or hereafter owned or otherwise acquired by lease, easement, license or otherwise, by the Developer or the Association for the common use and enjoyment of the Owners, whether located within the Property, adjacent to the Property or in close proximity to the Property. The Common Areas shall include any of the following which may be designated as a Common Area by Developer or Association from time to time in accordance with the Declaration, including without limitation (a) signage, lighting, walkways, green spaces, gates, walls, fences, improvements, landscaping and landscaped or other areas, including all medians within any roadways, (b) all storm drains and sewers, drainage and/or watershed protection or detention ponds, basins, spillways, dams or other areas and facilities located within the Development (excluding such areas as are located solely within the boundaries of any Lot), (c) all utility lines, pipes, ducts, conduits, equipment, machinery and other apparatus and appurtenances which are located in or serve any portion of the Common Areas (other than those owned by the utilities provider and others located solely within the boundary of any Lot, and (d) all green spaces, detention areas, parks, nature trails, recreational facilities and areas. The designation of any land and/or improvements as Common Areas shall not mean or imply that the public at large acquires any easement of use or enjoyment or any other rights, licenses or benefits therein or to the use thereof, and the use and management of such Common Areas shall be exclusively governed by the terms and conditions of this Declaration.

1.11 Common Area Assessment. The Common Area Assessment shall mean and refer to any and all assessments imposed by the Association to pay Common Area Expenses in accordance with the provisions of Article VII of this Declaration.

1.12 Common Area Expenses. The term "Common Area Expenses" shall mean and refer to all expenditures made or incurred by or on behalf of the Association in connection with the maintenance, repair, improvement, alteration, operation and management of the Common Areas and the Association, including, without limitation, those expenses described in Section 8.1(b) below, together with all funds assessed for the creation or maintenance of reserves pursuant to the provisions of this Declaration.

1.13 Declaration. The term "Declaration" shall mean and refer to this Declaration of Easements, Covenants and Restrictions for FIVE OAKS, and all amendments thereto.

1.14 Developer. The term "Developer" shall mean Five Oaks, LLC, an Alabama limited liability company, its successors and assigns.

1.15 Development. The term "Development," with an initial capital letter, shall mean and refer to the Property and all Improvements thereon and any of the Additional Property and Common Area submitted to the provisions of this Declaration, pursuant to Section 2.2 hereof together with Improvements thereon.

1.16 Dwelling. The term "Dwelling" with an initial capital letter shall mean and refer to the Improvement to be constructed on a Lot for use as single-family detached residential housing unit.

1.17 Governmental Authority. The term "Governmental Authority" shall mean any and all city, county, state and federal governmental or quasi-governmental agencies, bureaus, departments, divisions or regulatory authorities having jurisdiction over any portion of the Development.

1.18 Immediate Family. The term "Immediate Family" shall include the lineal descendants of the applicable person and his or her spouse who are then residents of the applicable Building.

1.19 Improvement. The term "Improvement," with an initial capital letter, shall mean and refer to any building, structure or device constructed, erected or placed upon any Lot or Common Area which in any way affects the exterior appearance of any Lot, Building, or Common Area. Improvements shall include, by way of illustration and not limitation, buildings, sheds, foundations, covered patios, underground utilities, wells and pumps, roads, driveways, walkways, paving, curbing, parking areas, 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 Building. "Improvements" shall also mean any tree cutting or thinning, grading, any excavation or fill.

1.20 Institutional Mortgagee. The term "Institutional Mortgagee" shall mean and refer to any federal or state chartered bank, trust company, life insurance company, federal or state savings and loan association, real estate investment trust or other recognized lending institution which normally and customarily engages in the business of making mortgage loans and shall include any institutional or governmental purchaser of mortgage loans in the secondary market, such as Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, which holds a first Mortgage on any Lot or Building which has been duly and properly recorded in the Probate Office of Jefferson County, Alabama.

1.21 Lot. The Term "Lot" shall mean and refer to any unimproved portion of the Property upon which it is intended that a Dwelling be constructed thereon. Upon the recordation of any subdivision plat for any portion of the Property, each lot indicated thereon shall be a Lot for purposes of this

Declaration. A parcel of land shall be deemed unimproved and thus considered to be a Lot rather than a Dwelling, until the Improvements constructed thereon are sufficiently complete to reasonably permit habitation thereof. Upon such completion, such Lot and the Improvements thereon shall collectively be considered to be a Dwelling for purposes of this Declaration. In the event any Lot is re-subdivided or Lots are combined by Developer pursuant to the provisions hereof, the re-subdivided Lots shall constitute the number of Lots which remain after such division or combination of Lots.

1.22 Living Space. The term "Living Space" shall mean and refer to the enclosed and covered areas within a Dwelling which are heated and cooled by heating, ventilating and air conditioning equipment, exclusive of garages, carports, porches, terraces, balconies, decks, patios, courtyards, attics and basements.

1.23 Mortgage. The term "Mortgage," with an initial capital letter, shall mean and refer to any mortgage, deed of trust or other security device encumbering a Lot or any interest therein and which shall have been duly and properly recorded in the Probate Office of Jefferson County, Alabama.

1.24 Mortgagee. The term "Mortgagee," with an initial capital letter, shall mean and refer to the holder of any Mortgage and shall include any Institutional Mortgagee.

1.25 Occupant. The term "Occupant" shall mean and include any Owner or Tenant (including any member of their respective Immediate Families) and guests, agents, servants, employees or invitees of any Owner or Tenant and any other person who occupies or uses any Lot or 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.

1.26 Owner. The term "Owner," with an initial capital letter, shall mean and refer to the record owner, including Developer, of fee simple title to any Lot, whether a corporation, partnership, limited liability company, 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 at the foreclosure sale held with respect to the foreclosure of such Mortgage or (ii) any Tenant, 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.

1.27 Property. The term "Property," with an initial capital letter, shall mean and refer to that certain real property situated in Jefferson County, Alabama which is more particularly described on Exhibit "A" to this Declaration and the **Akin Tract** as described in paragraph 13.20 and more particularly on Exhibit "B" to this Declaration.

1.28 Subdivision Plan. The term "Subdivision Plan" shall mean and refer to the plan for the subdivision of the Property into Lots and said plan or map being submitted for preliminary and final plat approval pursuant to R-2 Zoning as the same may be modified by the Developer in accordance with this Declaration. The Subdivision Plan is intended to be a general description of the location of the Lots within the Property.

1.29 Tenant. The term "Tenant" shall mean and refer to any person who is occupying a Dwelling under a lease with the Owner of the Dwelling pursuant to which the Owner has agreed to provide such person the exclusive right to use the Dwelling for a period of not less than six months.

ARTICLE II
PROPERTY SUBJECT TO THE DECLARATION

2.1 General Declaration. Developer hereby declares that the Property is and shall be subject to the easements, covenants, conditions, restrictions, charges, liens and regulations of this Declaration and the Property, any part thereof and each Lot, Building, and all Common Areas and Improvements thereon 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 the Property and shall be binding upon and inure to the benefit of Developer and upon all Owners and Occupants of the Property and any Lot, Building, and Common Area and Improvements thereof.

2.2 Development of Property. Developer shall have the right, but not the obligation, for so long as Developer owns any Lot in the Development, to make Improvements and changes to all Common Areas and to all Lots owned by Developer, including, without limitation, (i) installation and maintenance of any Improvements in or to the Common Areas, (ii) construction of roads and paths pursuant to the easements granted herein; (iii) installation and maintenance of any other utility systems and facilities within the Common Areas or easements therefor, and (iv) installation of security and trash and refuse facilities.

2.3 Right of Developer to Modify Restrictions with Respect to Lots. With respect to any Lot owned by Developer, Developer may, by deed, contract or other instrument filed for record in the manner hereinabove, modify the provisions of this Declaration as the same apply to any such Lot; provided, however, that this Declaration may not be modified or amended to exempt any Lot situated thereon from the payment of the Assessments except for such exemption as provided to the Developer as set forth in Section 6.3 hereof.

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

ARTICLE III

EASEMENTS

3.1 Grant of Nonexclusive Easements to Owners. Subject to the terms and conditions of this Declaration and the rules and regulations from time to time established by the Board, 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 Area in common with Developer, its successors, assigns, and licensees, and all other Owners and Occupants. The easement and rights granted pursuant to this Section 3.1 are and shall be permanent and perpetual, are nonexclusive, are appurtenant to and shall pass and run with title to each Lot as an appurtenance thereto and may not be severed, transferred, assigned or otherwise alienated separate or apart from a Lot. The easements and rights granted pursuant to this Section 4.1(a) are expressly subject to the rights reserved by Developer in this Article III.

3.2 Grant of Easement to Governmental Authorities. Developer does hereby grant to each branch, bureau, department and agency of the Governmental Authorities and their respective agents, employees and representatives, a permanent, perpetual and nonexclusive easement over, across, through

and upon the Property within the Development for the purposes of performing such duties and activities related to law enforcement, fire protection, trash and refuse collection, building inspection services, mail and package delivery, medical and emergency services and any other functions or duties to be performed by the Governmental Authorities as shall be required or appropriate from time to time.

3.3 Road Easement, Reservation of Controlled Access Easement.

(a) **Common Roads.** Subject to the terms and conditions set forth in this Declaration, Developer does hereby grant to each Owner and Occupant a nonexclusive easement over and upon, and the right to use for pedestrian and vehicular travel and transportation purposes, the Access Road as a Common Area in common with each other and the Developer and Association, and their respective, successors and assigns, and the rights of all other parties having any interest or rights in and to any or all of such Access Road. Subject to the provisions of Sections 3.3(b) and 3.3(c) below, the easement and right to use granted pursuant to this Section 3.3(a) shall be permanent and perpetual, are nonexclusive, are appurtenant to and shall pass and run with the title to each Lot. To the extent that the Developer is obligated to maintain or otherwise pay any portion of the costs of maintaining the Access Road under the easement agreement recorded in the Probate Office of Jefferson County, Alabama, or otherwise, the Association shall assume all of the Developer's obligations relating thereto and such costs shall be included as Common Area Expenses pursuant to Section 7.1(b) below.

(b) **Waiver of Unlimited Access.** Each Owner, by acceptance of a deed or other instrument conveying any interest in any Lot does hereby waive all rights of uncontrolled and unlimited access, ingress to and egress from such Lot and acknowledges and agrees that (i) access and ingress to and egress from the Development may be controlled, restricted and limited to exclude the general public therefrom and (ii) access, ingress to and egress from such Lot shall be limited to the roads, walkways, paths, golf cart paths and biking trails, hiking and jogging paths designated as Common Areas by Developer; provided, however, that, subject to the terms and provisions of the Declaration, vehicular and pedestrian access to and from all Lots shall be provided at all times. Developer does hereby establish and reserve for itself, the Association and their respective successors and assigns, the right and privilege, but not the obligation, to maintain manually or electronically operated gates controlling, limiting and restricting vehicular and pedestrian access to and from any portion of the Development.

(c) **Maintenance and Control of Access Road.** Developer reserves for itself and the Association, and their respective successors and assigns, the exclusive right to maintain, repair and replace the Access Road, and the Development Entrance Road, including without limitation, streets, entrance ways, gates, bridges, landscaping, and related Improvements located on or about the Access Road and the Development Entrance Road, as Common Areas in accordance with Section 3.4 hereof; provided that no fences, walls, curbs or other obstructions shall be constructed which will impair the ingress and egress of vehicles and pedestrians, or the installation of utilities as herein provided, or otherwise unreasonably interfere with the easements herein granted. Developer reserves the exclusive right to change the location of the Access Road within a Lot to accommodate construction of Improvements constructed or to be constructed thereon so long as such change in location does not interfere with the easements herein granted. Developer also reserves for itself and the Association and their respective successors and assigns, the exclusive right, but not the obligation to regulate, control and police the traffic on the Access Road and the Development Entrance Road and from time to time to establish, modify, and enforce reasonable rules and regulations regarding the use of the Access Road, and the Development Entrance Road.

3.4 Reservation of General Access Easement.

(a) Developer does hereby establish and reserve for itself, the Association and their 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 (b) the performance of the respective duties of Developer, and the Association hereunder, including, without limitation, taking any action required or permitted to be taken by Developer and the Association pursuant to any of the terms or provisions of this Declaration; 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 or Occupant of Lot or Dwelling directly affected thereby.

(b) Developer does hereby establish and reserve, for itself, the Association and their respective agents, employees, representatives, invitees, successors and assigns, a permanent and perpetual nonexclusive easement appurtenant over, across, under, through and upon all of the Property, including the Lots and Common Areas, for the purpose of (i) constructing Improvements in and to any Lots, (ii) installing, maintaining, repairing and replacing any other Improvements to the Property or to the Common Areas and (iii) doing all other things reasonably necessary and proper in connection therewith; provided, however, that in no event shall Developer have any obligation to undertake any of the foregoing.

3.5 Reservation of Easements With Respect to Common Areas. In addition to the other rights and easements established and reserved herein and regardless of whether Developer continues to own a Lot within the Development, Developer hereby establishes and reserves for itself and its successors and assigns, a permanent and perpetual, nonexclusive easement to have access, ingress to and egress from and the right and privilege to use and enjoy the Common Areas and all Improvements thereon for such purposes as Developer deems appropriate; provided, however, that Developer shall not exercise such rights so as to unreasonably interfere with the rights of the Owners to use the Common Areas. Developer does hereby establish and reserve unto itself and its successors and assigns the permanent right to change, modify and realign the boundaries of any of the Common Areas, and any Lots owned by Developer subject to and in accordance with the terms of the R-2 Zoning. Developer further reserves the right, but shall not have any obligation, to donate the Common Areas and/or Green Spaces to a Conservatory or Conservation Easement, or to convey by quitclaim deed to the Association, or a Governmental Authority at any time and from time to time any portion of the Property or any Improvements thereto to be utilized as Common Areas.

3.6 Reservation of Easement for Utilities. Developer does hereby establish and reserve for itself and the Association and their respective successors and assigns, a permanent and perpetual nonexclusive easement appurtenant over, across, under, through and upon all portions of the Common Areas and all Lots which are reasonably necessary for the purpose of installing, erecting, replacing, relocating, maintaining and operating master television and/or cable systems, security and similar systems and all utilities necessary or convenient for the use of any portion of the Development, including, without limitation, publicly or privately owned and operated electrical, natural gas, telephone, water and sewer services, storm drains and sewers, drainage systems, retention ponds, basins, dams, spillways and facilities, lines, pipes, conduits, equipment, machinery and other apparatus and appurtenances necessary or otherwise reasonably required in order to provide any utility service to any portion of the Development. The rights herein reserved by the Developer and the Association shall include, without limitation, the right to grant easements to the providers of utilities for the purposes herein established, and each of the Owners hereby appoint the Developer and/or the Association, as the case may be, irrevocably, as their attorney in fact, for

the purpose of executing such documents as may be necessary and appropriate in connection with the granting of such easements. Notwithstanding anything provided in this Section 3.6 to the contrary, (i) the utilization of any of the easements and rights established and reserved pursuant to this Section 3.6 shall not unreasonably interfere with the use or occupancy of any Building situated on any Lot, and (ii) Developer shall use good faith efforts to attempt to cause any utility company or other supplier or provider of any utility service which may utilize any of the easements and rights reserved and established pursuant to this Section 3.6 to take reasonable action to repair any damage caused by such utility company or other supplier or provider of such utility service during the exercise of any rights established and reserved herein.

3.7 Reservation of Easements for Signs, Walks, and Trails. 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 the Property, including the Lots, for the purpose of constructing, installing, maintaining, repairing, operating, replacing and the use of paved and unpaved roads, walkways, pedestrian, golf cart paths and biking trails and paths, and traffic directional signs and related improvements. The Developer reserves the right to license the right to use any such roads, trails and Improvements to licensees who are not Owners or Occupants. Each Owner and Occupant, and their respective guests and invitees, shall have the non-exclusive right to use as Common Area any roads, trails and related improvements in common with each other, the Developer, the Association and any successors, assigns and licensees of Developer.

3.8 Reservation of Maintenance Easement. Developer does hereby establish and reserve for the Association, and its agents, employees, successors and assigns, a permanent and perpetual right and easement to enter upon any Lot for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds, stumps or other unsightly growth and removing trash so as to maintain reasonable standards of health, fire, safety and appearance within the Development; provided, however, that such easement shall not impose any duty or obligation upon Developer or the Association to perform any of the foregoing actions.

3.9 Reservation of Environmental Easement. 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 on, over, across and upon all Lots and all unimproved portions of any Common Area for the purpose of taking any action necessary to effect compliance with the Special District Plan or any watershed, soil erosion or environmental rules, regulations and procedures from time to time promulgated or instituted by any Governmental Authorities or the Board. The easement and right established and reserved herein shall include, without limitation, the right to implement erosion control procedures and practices, the right to drain standing water, the right to establish wildlife and wildflower sanctuaries, and the right to take any other action which may be required in or any Governmental Authorities. Except in the case of an emergency situation or a perceived emergency situation, the exercise by Developer or the Association of the rights reserved in this Section 3.9 shall not unreasonably interfere with the use or occupancy of any Dwelling situated on any Lot.

3.10 Grant and Reservation of Easement and Restrictions with Respect to any Common Areas or Green Spaces.

(a) The Developer hereby grants to each Owner and Occupant, and their respective guests and invitees, the nonexclusive right and privilege to use and enjoy any Green Space as a Common Area for recreational purposes, in common with the Developer, its successors, assigns, and licensees, and all other Owners and Occupants, and their guests and invitees. The right granted pursuant to this Section 3.10(a) are and shall be permanent and perpetual, and are appurtenant to and shall pass and run with title to each Lot. The rights granted hereunder with respect to any Green Space are expressly subject to the

rights reserved by the Developer to restrict the use of any Green Space under Section 3.10(b) below and the reservation of the Developer with respect to the use of any Green Space under Section 3.10(e) below.

(b) Each Owner, by acceptance of a deed or other instrument conveying any interest in a Lot, does hereby agree that the use and enjoyment of any Green Space shall be limited to the rights herein granted by the Developer in and to any Green Space. Developer does hereby reserve for itself and the Association, their respective successors and assigns, the right to promulgate and enforce in accordance with this Declaration rules and regulations regarding the use of any Green Space, and the method, time and location, and other matters reasonably related to the use of any Green Space, including without limitation, with respect to the following:

(c) Developer reserves for itself and the Association and their respective successors and assigns, the exclusive right to maintain, repair and restore any Green Space, as a Common Area in accordance with Section 3.4 hereof.

(d) Developer does hereby reserve for itself and the Association, their respective successors and assigns, the right to use any Green Space and the right, but not the obligation, to grant to other persons a nonexclusive right and license to use any Green Space; provided that the use of any Green Space by such persons shall be subject to the restrictions and limitations on the use of any Green Space as herein set forth and the rules and regulations promulgated by the Developer and the Association with respect to the use of any Green Space.

(e) In the event that an Owner or Occupant of a Lot or Dwelling violates any of the restrictions and limitations set forth in subparagraph (b) above, and such violation causes damage to any Green Space, such Owner shall be liable to the Association for the cost of curing the damage to such Green Space caused by such violation. In the event that any such violation causes personal injury to any person or to the property of any person, the Owner shall indemnify and hold the Association and/or the Developer and their respective directors, officers, employees, successors and assigns, harmless from and against any liability the Association may have to such person to the extent that insurance proceeds available to the Association, if any, are not sufficient to satisfy any such liability.

3.11 Flowage Easement. Drainage flow shall not be obstructed or diverted from drainage swales, storm sewers and/or utility easements as authorized in this Declaration. Developer or the Association may cut drainways for surface water wherever and whenever such action may appear to Developer or the Association to be necessary in order to maintain reasonable standards of health, safety and appearance. Except as provided herein, existing drainage shall not be altered in such a manner as to divert the flow of water onto any Lot or Common Area or into any retention pond. The provisions hereof shall not be construed to impose any obligation upon Developer or the Association to cut any such drainway. No permanent structure may be constructed or placed in such flowage easement area. Each Owner also agrees, by acceptance of a deed to a Lot to assume, as against Developer or the Association, all the risks and hazards of ownership or occupancy attendant to such Lots, including but not limited to its proximity to waterways.

3.12 Easements of Encroachment. The Developer grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area and between adjacent Lots. A permitted encroachment is a structure or fixture that extends unintentionally from one person's property onto another's a distance of less than two (2) feet, as measured from any point on the common boundary along a line perpendicular to such boundary. An encroachment easement shall not exist if the encroachment results from willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement

3.13 Facilities and Services Open to the Public.

(a) Certain facilities and areas within the Development may be open for public use and enjoyment. Such facilities and areas may include, by way of example: greenbelts, trails and paths, parks, areas conducive to gathering and interaction, and roads. The Developer may designate such facilities and areas open to the public at the time the Developer makes them part of the Development, or the Board may so designate at any time thereafter.

(b) To the extent the easements granted and reserved in this Article IV shall be used solely for non-commercial recreational purposes, the responsibility of Developer and the Association and their respective successors and assigns for liability for injury or damage to persons (including death) or property is intended to be limited by Section 35-15-1 et seq. of the Code of Alabama 1975 (the "Statute"). However, in the event the Statute is deemed inapplicable to the Developer and/or the Association and their respective successors and assigns, any person by his use of the easements granted hereunder or otherwise, shall be deemed to have constructively agreed that the Developer and/or the Association shall have no duty of care to keep the Common Areas and other easement premises safe for entry and use by such persons, or to give any warning of hazardous conditions, use of structures or activities on or about the Common Areas and other easement premises; and the Developer and the Association and their respective agents, employees, officers and directors and their respective successors and assigns shall have no liability for any injury to persons or property caused by any act or omission of Developer or the Association or any other person relating to or arising out of the use of the Common Areas and other easement premises by any person.

ARTICLE IV ASSOCIATION

4.1 Membership. Every Owner, including the Developer for so long as it is an Owner, shall be a member of the Association. Membership shall be appurtenant to and may not be separated from, ownership of a Lot. Membership shall attach automatically upon acceptance of the delivery of the deed or other instrument of transfer of ownership for a Lot. An Owner's membership shall terminate automatically upon the delivery of the deed or other instrument of transfer of ownership for a Lot or upon such ownership interest for a Lot being divested in some other manner. The new Owner of a Lot shall promptly record such instrument in the Probate Office of Jefferson County, Alabama, and a true copy shall be promptly delivered to the Association.

4.2 Board. The Board shall have the rights and duties set forth in the Certificate of Formation and the Bylaws. Developer hereby retains and shall have the right to appoint or remove, with or without cause, any member or members of the Board and any officer or officers of the Association until such time as there is no Lot without a Dwelling constructed thereon within the Development, or the Developer elects to terminate its exclusive voting rights, whichever shall first occur. Each Owner, by acceptance of a deed to or other conveyance of a Lot or Building, vests in Developer such authority to appoint and remove members of the Board and officers of the Association as provided by this Section 4.2.

4.3 Voting Rights. Subject to the rights reserved to Developer in Section 4.2 hereof and the Certificate of Formation and Bylaws (which, among other things, provide that members of the Association shall have no right to vote so long as the Developer exercises its right to appoint the Board of Directors), each member shall be entitled to one (1) vote for each Lot in which the Owner holds the interest required for membership. When more than one Person holds such interest, all such Persons may be Members, and the vote for such Lot shall be exercised in the manner set forth in the Bylaws of the Association, but in no event shall more than one (1) vote be cast with respect to any one Lot. There shall be no fractional voting. The votes of an Owner of more than one Lot cannot be divided for any issue and must be voted as a whole.

Except where otherwise provided in this Declaration, the Certificate of Formation or the Bylaws, the affirmative vote of the Owners who own at least three-fourths (3/4) of the Lots shall be required for any action to be taken by the Members. Voting may take place at a meeting held in accordance with the Bylaws. Voting may take place by proxies executed and delivered in the manner set forth in the Bylaws.

4.4 Duties and Powers of Association. In addition to the rights, duties, responsibilities and obligations of the Association otherwise set forth in this Declaration, the Association shall have the power to do, cause to be done and otherwise perform or cause to be performed any of the duties and powers set forth in the Certificate of Formation and the Bylaws. The Association may exercise any other right or privilege granted to it expressly by this Declaration or by law, together with every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege. In the event of any conflict, ambiguity or inconsistency between the Code of Alabama 1975 (as amended), this Declaration, the Certificate of Formation, the Bylaws or any rules and regulations adopted from time to time by the Association, then the provisions of the Code of Alabama 1975 (as amended), this Declaration, the Certificate of Formation, the Bylaws, and any rules and regulations adopted by the Association, in that order, shall prevail. The powers of the Association shall include, but not be limited to, (i) the power to purchase one or more Lots and/or Buildings and any other real or personal property, whether tangible or intangible, and to hold, lease, mortgage, sell and otherwise convey the same, (ii) subject to the provisions of this Section 4.4, the right to borrow money for the purpose of acquiring additional Common Areas for constructing, repairing, maintaining or improving the Common Areas, or any portion thereof, or for providing any of the services authorized herein, (iii) subject to the provisions of this Section 4.4, the right to give Mortgages or other security instruments encumbering all or any part of the Common Areas as security for any loan obtained by the Association; provided, however, that the lien and encumbrance of any such Mortgage shall be subject and subordinate to all of the rights, interests, privileges, easements, licenses, and options reserved or established herein for the benefit of Developer, the Association and all Owners and Occupants, (iv) the right to grant and accept easements and other agreements for the use of property as Common Areas or otherwise, (v) the right to transfer fee simple title to all or any portion of the Common Areas to any Governmental Authority; and (vi) the right to arrange with any of the Governmental Authorities or any public or private utilities or others, for the furnishing of trash collection, and/or security services for the Common Areas and/or the Lots and Buildings. For so long as Developer shall own any Lot or Building, the Association shall not, without the consent of Developer, borrow money or pledge, mortgage, encumber, sell or otherwise convey any interest it may have in the Common Areas. Except as otherwise specifically provided to the contrary herein, in the Certificate of Formation or in the Bylaws, the powers and authority granted to the Association may be exercised by the Board, acting through the officers of the Association, without further consent or action on the part of the Members.

4.5 Agreements. Subject to the conditions, restrictions and other provisions of this Declaration, all agreements, actions and determinations lawfully authorized by the Board shall be binding upon all Owners and Occupants, their heirs, executors, personal representatives, administrators, successors and assigns and all others having any interest in the Development. In performing its responsibilities hereunder, the Association, through the Board, shall have the right and authority to delegate to such persons of its choice such duties of the Association as may be determined by the Board. In furtherance of the foregoing and not in limitation thereof, the Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall deem necessary or desirable for the proper operation of any portion of the Development, whether such personnel are furnished or employed directly by the Association or by independent contract with the Association. All costs and expenses incurred incident to the employment of a manager of the Development or any of the Common Areas shall be a Common Area Expense. During the term of any such management agreement entered into by the Association with a third party, such manager may, if authorized by the Board, exercise all the powers and shall be responsible for

the performance of all of the duties of the Association, excepting any of such powers or duties specifically and exclusively reserved to the Board or the officers of the Association by the Declaration, the Certificate of Formation or the Bylaws. Such manager may be an individual, corporation or other legal entity and may be bonded in such manner as the Board may require, with the costs of such bond to be a Common Area Expense. In addition to the foregoing, the Association may pay for and the Board may hire and contract for such legal and accounting services as are necessary or desirable in connection with the operation of the Development, or the enforcement of this Declaration, the Certificate of Formation, the Bylaws or any rules and regulations of the Association and cost of such services shall be a Common Area Expense.

4.6 Management by Developer or its Affiliates. Developer or any affiliate thereof may be employed as the manager of the Association and the Development in accordance with Section 5.5 hereof for so long as Developer owns any Lot or Building within the Development, at such compensation and on such terms as would be usual, customary and obtainable in an arms-length transaction with any third party providing comparable services for any real estate development in the southeastern United States of the size, quality and nature of the Development, and the cost of such services shall be a Common Area Expense. Each Owner, by acceptance of a deed to or other conveyance of a Lot or Building, shall be deemed to ratify the provisions of this Section 4.6 and specifically be deemed to have approved any such management agreement entered into by the Association and Developer or any affiliate thereof.

4.7 Rules and Regulations. The Board may establish and enforce reasonable rules and regulations governing the use of all Lots, Buildings, Common Areas. Without limiting the foregoing, the Board may adopt rules and regulations which shall govern the use of any of the Common Areas (including, specifically, the use of any Green Space or any of the roads, trails and recreational facilities, if any, situated within the Common Areas), the establishment of bird sanctuaries, wildlife and wildflower areas, the enforcement of all of the terms and provisions of this Declaration and any rules and regulations adopted by the Board and such other matters, including, without limitation, the limitation, restriction or prohibition of application of fertilizers, pesticides, and other chemicals within the Development. Copies of such rules and regulations shall be provided to Owners and Occupants and shall be binding upon all Owners and Occupants until and unless such rule or regulation is specifically overruled, cancelled or modified by the Board or by the affirmative vote of the Owners of three-fourths (3/4) of the Lots at any regular or special meeting of the Association; provided, however, that no such rules or regulations may be overruled, cancelled or modified unless such action is also approved by Developer for so long as Developer owns a Lot or Building in the Development.

4.8 Indemnification. The Association shall and does hereby indemnify, defend and agree to hold harmless each and every officer, agent, representative and member of the Board of the Association and the Developer, and its officers, directors, shareholders, agents, employees, and representatives, from and against any and all expenses, including court costs and reasonable attorney's fees, suffered, paid or incurred by any such Indemnified Person in connection with any action, suit or other proceedings (including the settlement of any suit or proceedings if approved by the Board) to which such Indemnified Person may be made a party by reason of being or having been an officer, director, shareholder, agent, representative or member of the Board of the Association or by reason or actions taken or not taken in connection with the rights and obligations imposed upon any of such persons under this Declaration. The officers, directors, shareholders, agents, employees, and members of the Board of the Association and the Developer, and its officers, directors, shareholders, agents, employees, shall not be liable for any mistake in judgment, negligence or otherwise except for their own willful misconduct or reckless disregard of duty, as finally determined by a court of competent jurisdiction. The officers, directors, shareholders, agents, employees, and members of the Board of the Association and the Developer, and its officers, directors, shareholders, agents, employees, representatives, shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association and the

Association shall and does hereby indemnify, defend and agree to forever hold each such person harmless from any and all liability to others on account of any such contract or commitment. The indemnification obligations and rights provided for herein shall not be exclusive of any other rights to which any officer, director, shareholder, agent, employee, or member of the Board of each of the Association or the Developer, or any of their respective officers, directors, shareholders, agents, employees, may be entitled, including anything provided to the contrary contained in the Certificate of Formation or the Bylaws of the Association. The Association may maintain general liability and officers and directors liability insurance in order to fulfill its obligations under this Section 4.8 and the costs of such insurance shall constitute a Common Area Expense.

ARTICLE V RESPONSIBILITIES OF THE ASSOCIATION AND OWNERS

5.1 Maintenance of Common Areas. Except as may be otherwise provided to the contrary in this Declaration, the Association shall, to the extent it has received sufficient sums from the Owners through Common Area Assessments, maintain and keep in good repair and condition all portions of the Common Areas, including without limitation, easements for the benefit of the Property as provided in Article V hereof, which responsibility shall include the maintenance, repair and replacement of (i) green spaces, roads and walks, trails, paths, walkways, biking or pedestrian paths, landscaped areas, wildlife and wildflower sanctuaries, parks, recreational areas and other improvements made by Developer or Association, if any, made a future date, (ii) utility lines, pipes, plumbing, wires, conduits and related systems, appurtenances, equipment and machinery which are a part of the Common Areas and which are not maintained by a Governmental Authority, public or private utility, or other person, (iii) lawns, trees, shrubs, hedges, grass and other landscaping, and (iv) detention ponds and other water areas and facilities (either within or outside of the Development so long as the same are included within the Common Areas), including, without limitation, implementing and maintaining siltation, soil erosion and sedimentation programs and otherwise dredging, cleaning and maintaining all siltation ponds and appurtenances thereto as may be necessary or otherwise required by any Governmental Authorities. The Association shall not be liable for injuries or damage to any person or property (1) caused by the elements, acts of God or any Owner, Occupant or other person, (2) resulting from any surface or subsurface conditions which may at any time affect any portion of the Property caused by rain or other surface water which may leak or flow from any portion of the Common Area onto a Lot or Building, or (3) resulting from theft, burglary or illegal entry into the Development, any Lot or Building thereof. No diminution or abatement of Common Area Assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken by or performed by the Association hereunder or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association or from any action taken by the Association to comply with any requirements of the Governmental Authorities.

5.2 Responsibilities of Owners.

(a) The maintenance and repair of all Lots, Buildings, and all other Improvements situated thereon and all lawns, landscaping and grounds on or within a Lot shall be the responsibility of the Owner of such Lot. Each Owner shall be responsible for maintaining his or its Lot and Buildings, as the case may be, in a neat, clean and sanitary condition, both inside and outside of any Buildings or Improvements thereto. Such responsibilities shall include, without limitation, maintaining at all times appropriate paint and stain finished on all Buildings and other Improvements and reroofing or replacing roofing shingles when the same become worn or would be replaced by a prudent Owner. No exterior changes, alterations or Improvements shall be made to any Lot or Building (including, without limitation, painting or finishing) without first obtaining the prior written approval of the same from the ARC and the Association.

(b) Each Lot shall be landscaped in accordance with Plans and Specifications submitted to and approved by the ARC and the Association pursuant to Section 8.7 hereof. The maintenance obligations set forth in this Section 6.3(b) shall apply to all portions of a Lot and shall be binding on the Owner of each Lot or Dwelling at all times, either prior, during or after the construction of any Improvements thereon. Grass, hedges, shrubs, vines and any other vegetation of any type on any Building Site shall be cut and trimmed at regular intervals at all times in order to maintain the same in a neat, safe and attractive condition. Dead vegetation, stumps, weeds, rubbish, debris, garbage and waste material shall be removed from any Building Site and properly disposed of outside of the Development.

ARTICLE VI ASSESSMENTS

6.1 Assessments and Creation of Lien. Each Owner of a Lot, by acceptance of a deed or other instrument conveying any interest therein, regardless of whether such deed or instrument contains a reference to this Declaration, is hereby deemed to covenant and agree to pay to the Association: (a) Common Area Assessments, as established and to be collected as provided in Article VII below, and (b) individual Assessments against any particular Lot or Building which are established or assessed pursuant to the terms of this Declaration, including, but not limited to, any fines as may be levied or imposed against such Lot in accordance with the provisions of this Declaration, including without limitation, Section 12.1 hereof. All Assessments, together with late charges and interest as provided in Section 6.4(a) below, and all court costs and attorneys' fees incurred by the Association to enforce or collect such Assessments, shall be an equitable charge and a continuing lien upon each Lot and Buildings thereon for which the Owner thereof is responsible for the payment of the same, which lien may be enforced in the manner provided in Section 6.4(c) below. Each Owner shall be personally liable for the payment of all Assessments coming due while he is the Owner of a Lot and his grantee shall take title to such Lot and Buildings thereon subject to the equitable charge and continuing lien therefor, but without prejudice to the rights of such grantee to recover from his grantor any amounts paid by such grantee to the Association which were the legal obligations of the grantor. All Assessments, together with late charges and interest at the Applicable Rate, as specified in Section 6.4(a) below, court costs and attorneys' fees incurred with respect thereto by the Association, shall also be a personal obligation of the person who was the Owner of the Lot at the time such Assessments and other costs and charges were assessed or incurred. In the event of co-ownership of any Lot, all of the co-Owners shall be jointly and severally liable for the entire amount of such Assessments. Assessments shall be paid in such manner and on such dates as may be fixed by the Board of the Association or by this Declaration. All Assessments shall be payable in all events without offset, diminution or abatement by reason of fire or other casualty or any taking as a result of, in lieu of or in anticipation of the exercise of the right of eminent domain, condemnation or by private purchase in lieu thereof with respect to any Lot, Building, Common Area, or any other portion of the Development or any other cause or reason of any nature.

6.2 Individual Assessments. Any expenses of the Association occasioned by the conduct of less than all of the Owners or by any Owner or Occupant, or the respective family members, agents, guests, servants, employees, invitees or contractors of any Owner or Occupant, shall be specially assessed against such Owners and their respective Lots or Buildings. The Individual Assessments provided for in this Section 6.2 shall be levied by the Board and the amount and due date of such Assessments shall be specified by the Board in a notice to such Owner. The provisions of this Section 6.2 shall apply, without limitation, to any individual Assessments levied pursuant to the provisions of this Declaration.

6.3 Date of Commencement of Assessments. The Assessments provided for herein shall commence as to each Lot on the day on which such Lot is conveyed to a person other than Developer and shall be due and payable in such manner and on such schedule as may be established from time to time by the Board of the Association. Annual Common Area Assessments and any outstanding extraordinary

Common Area Assessments shall be adjusted for each Lot according to the number of months then remaining in the then fiscal year of the Association and the number of days then remaining in the month in which such Lot is conveyed. Annual and extraordinary Common Area Assessments for Lots within any portion of the Additional Property hereafter submitted to the terms of this Declaration shall commence with respect to each such Lot on the date on which such Lot is conveyed to a person other than Developer, subject to proration and adjustment according to the number of months then remaining in the fiscal year of the Association and number of days then remaining in the month in which such Assessments commence. Notwithstanding anything provided herein to the contrary, Developer shall not be responsible for the payment of annual or extraordinary Common Area Assessments on any Lots which it or its affiliates own in the Development. Furthermore, for so long as Developer is the Owner of any Lot within the Development, Developer shall have the option to either pay annual Common Area Assessments on or Lots owned by Developer or fund any deficits which may exist between the total amount of annual Common Area Assessments assessed to all other Owners and the actual costs incurred by the Association for Common Area Expenses for the Development. At such time as Developer no longer has any interest in any Lot within the Development, Developer shall have no further obligation of any nature to pay any Assessments or otherwise fund any deficits relating to the Common Area Expenses.

6.4 Effect of Non-Payment; Remedies of the Association.

(a) Subject to the provisions of Section 6.3 hereof with respect to the Developer, each Owner of a Lot is and shall be deemed to covenant and agree to pay to the Association all Assessments provided for herein. In the event any Assessments or any portion thereof are not paid when due the same shall be subject to a late charge in an amount determined and uniformly applied by the Board from time to time and the Owner of such Lot shall be deemed in default herewith. In the event any Assessments or any portion thereof are not paid within thirty (30) days after the due date of the same, then the unpaid portion of the Assessment shall accrue simple interest at a rate established from time to time by the Board not exceeding lesser of eighteen percent (18%) per annum or the highest rate which may be charged to said Owner by law (the "Applicable Rate") from and after the thirtieth (30th) day from the due date until the same is paid in full; provided that if the Board has not established the Applicable Rate, the Applicable Rate during the interim prior to Board action shall be a rate at 4 points above the prime rate as published in the Wall Street Journal or comparable national daily publication. In the event the Association employs an attorney or otherwise takes any legal action in attempting to collect any amounts due from any Owner, such Owner agrees to pay all attorneys' fees, court costs and all other expenses paid or incurred by the Association. The lien and equitable charge for Assessments upon each Lot and Buildings as provided above shall also include all late charges, interest at the Applicable Rate and all attorneys' fees, court costs and all other expenses paid or incurred by the Association in attempting to collect any unpaid Assessments.

(b) In the event any Assessments or other amounts due to the Association are not paid by 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 or through any of its officers or authorized representatives, may undertake any or all of the following remedies:

(i) The Association may commence and maintain a suit at law against an Owner to enforce such charges and obligations for Assessments and any such judgment rendered in any such action shall include the late charge and interest at the Applicable Rate, as specified in Section 6.4(a) above, together with attorneys' fees, court costs and all other expenses paid and incurred by the Association in collecting such unpaid Assessments; and/or

(ii) The Association may enforce the lien created pursuant to Section 6.1 above in the manner hereinafter provided.

(c) There is hereby created a continuing lien on each Lot and Building, with power of sale, which secures the payment to the Association of any and all Assessments levied against or upon such Lot and Building all late charges and interest at the Applicable Rate assessed pursuant to Section 6.4(a) above and all attorneys' fees, court costs and all other expenses paid or incurred by the Association in collecting any Assessments. If any Assessments remain unpaid for more than sixty (60) days, then the Association, through its Board or any officer or authorized representative thereof, may, but shall not be obligated to, make written demand on such defaulting Owner, which demand shall state the date and amount of delinquency. Each default shall constitute a separate basis for a demand and claim of lien, but any number of defaults may be included in a single demand.

(d) If a defaulting Owner shall not pay the delinquency in assessments in full within ten (10) days after the giving of such demand, the Association may file a claim of lien with the Probate Office of Jefferson County, Alabama, after delivery of written notice of its intention to file the lien at least thirty (30) days prior to the filing of the claim of lien. The notice shall be delivered by certified mail to the defaulting Owner. If the defaulting Owner fails to pay the delinquency within said thirty (30) day period, the Association may at any time prior to full payment file the claim of lien and perfect its lien against the Lot and Buildings thereon of such delinquent Owner, which claim shall be executed by any member of the Board of the Association or any officer of the Association, contain the following information and be recorded in the Probate Office of Jefferson County, Alabama:

- (i) The name of the delinquent Owner and the name of the Association;
- (ii) The legal description and street address of the Lot upon which the lien claim is made;
- (iii) The amount of unpaid assessments and the date of the assessments;
- (iv) The total amount claimed to be due including late charges, interest at the Applicable Rate, collection costs and attorneys' fees incurred to date and a statement, if applicable, that such charges and costs shall continue to accrue and be charged until full payment has been received; and
- (v) A statement that the claim of lien is made by the Association pursuant to this Declaration and is claimed against such Lot and Buildings in an amount equal to that stated therein.

The lien provided for herein shall be in favor of the Association, shall be for the benefit of all other Owners (other than those Owners in default) 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; or may otherwise be enforced to the extent that any laws in the State of Alabama require or permit a different procedure for the enforcement of liens for assessments by a homeowners' association. 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 and Buildings. Each Owner, by acceptance of a deed to any Lot and Building shall be deemed to (1) grant to 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, (2) grant to 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, (3) expressly waive any objection to the enforcement and foreclosure of the lien created herein and (4) expressly waive the defense of the statute of limitations which may be applicable to the commencement of any such suit or action for foreclosure.

6.5 Subordination of Lien. Notwithstanding anything provided herein to the contrary, the lien for Assessments and other charges authorized herein with respect to any Lot and Building in the Development is and shall be subordinate to the lien of any Mortgage held by an Institutional Mortgagee, but only to the extent that the Mortgage held by any such Institutional Mortgagee is recorded in the Probate Office of Jefferson County, Alabama prior to the filing of a claim of lien by the Association pursuant to Section 6.4(c) above. When an Institutional Mortgagee exercises its foreclosure rights provided in its Mortgage and acquires title to or sells to a third party its interest in any Lot or Building, then such Institutional Mortgagee or its purchaser or transferee at such foreclosure sale shall (a) not be liable for any Assessments or other charges incurred prior to the date of transfer or acquisition of title by foreclosure so long as the Mortgage held by such Institutional Mortgagee was recorded in the Probate Office of Jefferson County, Alabama prior to the filing of a claim of lien by the Association pursuant to Section 6.4(c) above, but (b) be liable for all Assessments and other charges levied, assessed or incurred with respect to such Lot and Buildings from and after the date of such foreclosure sale. The foregoing shall not relieve any Owner whose Lot and Buildings have been foreclosed from the personal obligation to pay all Assessments and any other charges levied, assessed or incurred by the Association and the Association shall have the right to pursue all rights and remedies against a defaulting Owner notwithstanding the foreclosure of a Mortgage by an Institutional Mortgagee on such Owner's Lot and Buildings.

6.6 Certificates. The Association or any officer or authorized representative thereof shall, upon request and at such reasonable charges as may from time to time be adopted by the Board, furnish to any Owner or prospective Owner or Mortgagee of a Lot and Building, or any other person with an interest in a Lot and Building a certificate in writing setting forth whether the Assessments for which such Owner is responsible have been paid and, if not paid, the outstanding amount due and other costs and expenses due from such Owner. Such certificate shall be conclusive evidence of payment of any Assessments stated therein.

ARTICLE VII COMMON AREA ASSESSMENTS

7.1 Purpose of Assessments.

(a) The Common Area Assessments provided for herein shall be used for the general purposes of promoting the recreational, health, safety, welfare, common benefit and enjoyment of the Owners and Occupants of the Development and otherwise for the general upkeep and maintenance of the Development, including, specifically, the Common Areas and any Improvements thereto, and for the operation and management of the Association, all as may be more specifically authorized from time to time by the Board of the Association.

(b) The Common Area Expenses to be funded by the Common Area Assessments may include, but shall not be limited to, the following:

(i) Salaries, fringe benefits and other compensation paid and out-of-pocket expenses reimbursed by the Association for its employees, agents, officers, members of the Board and any third party contractors, when performing duties for the benefit of the Owners;

(ii) Management fees and expenses of administration, including legal and accounting fees, incurred by the Association for the benefit of Owners;

(iii) Utility charges for any utilities serving any of the Common Areas and charges for other common services, including, without limitation, trash collection and security services;

(iv) The costs of any insurance policies purchased for the benefit of the Association as required or permitted by this Declaration, including, without limitation, fire, flood and other hazardous coverage with respect to the Common Areas, and public liability coverage for events arising out of the use or condition of the Common Areas, and such other insurance coverage as the Board determines to be in the best interest of the Owners, including errors and omissions insurance, directors and officers liability insurance, fidelity bonds, and any other liability insurance coverage for the benefit of the Association, the members of the Board, any officers, employees, agents or representatives of the Association or for the Developer and its partners, agents and representatives;

(v) The expenses of maintaining, operating, repairing and replacing any portions of the Common Areas (including without limitation, the Access Road, Development Entrance Road, and other roads and trails) for which the Association is, or has elected to be responsible;

(vi) The expense of maintaining, operating, repairing and replacing any portion of the detention ponds for which the Association is responsible, or which the Board determines from time to time would be in the interest of the Association to maintain, operate, repair or replace as a Common Area;

(vii) Expenses of maintaining, operating and repairing any other amenities and facilities serving the Development which the Board determines from time to time would be in the best interest of the Owners to so maintain, operate and/or repair as a Common Area;

(viii) The expenses of the ARC which are not defrayed by plan review charges;

(ix) Ad valorem real and personal property taxes assessed and levied upon the Association's interest in any of the Common Areas;

(x) The costs and expenses for conducting recreational, culture or other related programs for the benefit of Owners and Occupants;

(xi) All other fees, costs and expenses incurred by the Association for the benefit of Owners in accordance with the terms and provisions of this Declaration or which the Board, in its sole discretion, determines to be appropriate to be paid by the Association, including, without limitation, taxes and governmental charges not separately assessed against Lots or Buildings; and

(xii) The establishment and maintenance of a reasonable reserve fund or funds (1) for inspections, maintenance, repair and replacement of any portions of the Common Areas for which the Association is responsible to inspect, maintain, repair or replace on a periodic basis, (2) to cover emergencies and repairs required as a result of casualties which are not funded by insurance proceeds and (3) to cover unforeseen operating contingencies or deficiencies arising from unpaid Common Area Assessments as well as from emergency expenditures and other matters, all as may be authorized from time to time by the Board.

7.2 Uniform Rate of Common Area Assessments.

(a) Both annual and extraordinary Common Area Assessments, as described in Sections 7.3 and 7.4 below, shall be assessed against each Lot in the Development at a uniform rate with the Owner of each Lot being required to pay the same amount of such annual and extraordinary Common Area Assessment; provided, however, that the Board may create classes of Lots within the Property and annual and extraordinary Common Area Assessments shall be at a uniform rate as to each class as

follows: (i) the Board shall allocate a percentage share of all annual Common Area Assessments as to each class of Lots within the Property and the Owner of each Lot shall pay his or her pro rata share of the annual Common Area Assessments allocated to his or her class of Lots and (ii) the Board may make extraordinary Common Area Assessments against one or more classes of Lots within the Property, or may allocate a percentage share of extraordinary Common Area Assessments as to each class of Lots within the Property, and the Owner of each Lot shall pay his or her pro rata share of the extraordinary Common Area Assessment allocated to his or her class of Lots; Except, the **Akin Tract** to be known as Lot 18 of Five Oaks shall be exempt from annual, extraordinary and/or special Common Area Assessments so long as no dwelling is constructed thereon. The **Akin Tract** may be subdivided into two (2) Lots if approved by the appropriate governmental authority and each lot would be subject to the payment of annual, extraordinary and/or special Common Area Assessments The pro rata share of an Owner shall be determined by a fraction, the numerator of which shall be the number of Lots owned by such Owner in a class of Lots and the denominator shall be the total number of Lots within such class at the time the Common Area Assessment is levied.

7.3 Annual Common Area Assessments.

(a) The Board shall establish the annual Common Area Assessment for the classes of Lots, if any, for each calendar year in the period commencing on date of filing this Declaration and continuing until and including December 31, 2021, based upon the Board's estimate of the amount required to fund the Common Area Expenses expected to be incurred by the Association during such periods. The Board shall not be required to base the Common Area Assessments on an actual budget of projected Common Area Expenses during such period but instead may base the Common Area Assessments on assessments made in comparable developments and such other factors as the Board deems reasonable. The foregoing shall not limit or restrict any extraordinary Common Area Assessments levied pursuant to Section 7.4 below (with the approval of the Owners as herein provided), or any individual Assessments levied in accordance with the provisions of Article VII above.

(b) Commencing with the calendar year which begins on January 1, 2021, (i.e., from January 1, 2021 through December 31, 2021 , 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 Area Expenses for the Development for the upcoming year, such budget to include a capital contribution or reserve account if necessary for the capital needs of the Association with respect to the Common Areas. The amount set forth in such budget shall constitute the aggregate amount of annual Common Area Assessments for the then applicable year and each Owner shall pay his pro rata share of the same as provided in Section 7.2 above. A copy of the budget setting forth the amount of annual Common Area Assessments to be levied against each class of the Lots for the following year shall be delivered to each Owner. The provisions of Section 7.3(a) above shall not apply to the Base Year or any subsequent year thereafter.

(c) In the event the budget for any year after the Base Year results in the Owners being liable for the payment of annual Common Area Assessments which exceed (without regard to proration or adjustment as provided in Article VII above) the greater of either (i) fifteen percent (15%) of the annual Common Area Assessments payable for the entire immediately preceding calendar year or (ii) the percentage increase in a nationally recognized consumer price index (the "Index") for January of the current year over the index for January of the Base Year (i.e., January 2020), then the budget and the amount of the annual Common Assessments shall be presented for approval by the vote of Owners of at least fifty percent (50%) of Lots who are voting in person or by proxy at such meetings. The percentage increase, if any, in the Index shall be determined by subtracting the Index for January in the Base Year from the Index for January in the current year and by dividing the difference by the Index for January in the Base Year. In the event the amount of the annual Common Area Assessments does not exceed the

limitations set forth above or until such time as the Owners of at least fifty percent (50%) of the Lots have approved such increase in the amount of the annual Common Area Assessments, then the budget approved by the Board for the then current fiscal year shall be implemented, subject to the restrictions and limitations set forth above on the amount of increase in annual Common Area Assessments.

Notwithstanding anything herein to the contrary, the Common Area Assessments for the Base Year and prior years shall be determined in accordance with Section 7.3(b) and shall not be subject to the limitations on increases in the amount of annual Common Area Assessments provided in this Section 7.3(c).

(d) If any budget or the amount of annual Common Area Assessments collected by the Association at any time proves to be inadequate or insufficient for any reason to fully pay all costs and expenses of the Association for Common Area Expenses, then the Board may call a meeting of the Owners for the purpose of approving extraordinary Common Area Assessments as provided in Section 7.4 hereof. If the actual amount of annual Common Area Assessments collected in any one year exceeds the actual costs incurred for Common Area Expenses for such year, the excess shall be retained by the Association as a reserve for subsequent years' Common Area Expenses.

7.4 Extraordinary Assessments. In addition to the annual Common Area Assessments authorized in Sections 7.2 through 7.3 hereof and the extraordinary Assessments authorized in Sections 10.1 and 10.3 below, the Board of the Association may levy in any year extraordinary Assessments for Common Area Expenses, or any extraordinary costs incurred by the Association; provided, however, that any such extraordinary Assessments (other than extraordinary Common Area Assessments levied pursuant to Sections 10.1, 10.3 and 10.4 hereof) shall be approved by the Owners of at least fifty percent (50%) of the Lots that will be subject to the extraordinary Assessment. The Board may make such extraordinary Assessments payable in one lump sum or in installments over a period of time which may, in the Board's discretion, extend beyond the then fiscal year in which said extraordinary Assessments are levied and assessed. Extraordinary Assessments shall be levied against and payable by each Owner in accordance with the provisions of Section 7.2 above; provided that the percentage share for each class of Lots with respect to the extraordinary Common Area Assessment shall be the same as the percentage share of such class of Lots for the then current annual Common Area Assessment.

7.5 Notice of Meeting and Quorum. Written notice of any meeting of the Owners called for the purpose of taking any action authorized in this Article VII shall be sent not less than ten (10) days nor more than fifty (50) days in advance of such meetings to all Owners entitled to vote at the meeting. Only Owners subject to a proposed extraordinary Common Area Assessment shall be entitled to vote on such extraordinary Assessments. The presence in person or by proxy of Owners of fifty percent (50%) of the Lots entitled to vote at the meeting shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement but there shall be no specific requirement establishing a quorum at such subsequent meeting and the vote of the Owners holding at least fifty percent (50%) of the Lots who are voting in person or by proxy at any such special meeting shall be binding on all of the Owners. At such time as a quorum is obtained, the vote of the Owners holding at least fifty percent (50%) of the Lots who are voting in person or by proxy at such meeting shall be required to approve any matter in which Owners are entitled to vote hereunder.

ARTICLE VIII ARCHITECTURAL REVIEW COMMITTEE DEVELOPMENT AND ARCHITECTURAL STANDARDS

8.1 Committee Composition. The ARC shall consist of not less than two (2) nor more than five (5) persons, each of whom shall be appointed or elected as provided in Section 8.2 below. Subject to

the provisions of Section 8.2(a) below, the regular term of office for each member of the ARC shall be three (3) years, coinciding with the fiscal year of the Association, except in the case of the first ARC elected by the Owners whose members' terms shall be staggered as provided in Section 8.3 below. Each Owner, by acceptance of a deed to or other conveyance of a Lot, shall be deemed to ratify the provisions of Section 8.2 below.

8.2 Appointment and Removal of ARC Members.

(a) Notwithstanding any of the provisions hereof, for so long as there are any Lots within the Property upon which a Dwelling has not been constructed thereon, Developer shall have the sole and exclusive right to appoint and remove all of the members of the ARC.

(b) At such time as there is no Lot without a Dwelling constructed thereon within the Property, or upon Developer's sooner written notice to the Owners that it no longer desires to exercise the right to appoint and remove members of the ARC as provided in Section 8.2(a) above, then the members of the ARC shall be elected or removed by the Owners of the Lots within the Property in accordance with the procedure set forth in subparagraph 8.3 below.

(c) In the event of death, resignation or removal of a member of the ARC, the vacancy shall be filled in accordance with subparagraph (a) or (b) above, whichever is applicable.

8.3 Procedure for Election and Removal. Subject to the provisions of Section 8.2(a) above, the procedure for the election and removal of the ARC by the Owners shall be as follows:

(a) Within 30 days after the provisions of Section 8.2(b) are in effect, the ARC shall nominate for election by the Owners to the ARC one person for a term of three years, one person for a term of two years and one person for a term of one year. The ARC shall then call a meeting of the Owners by delivery of written notice of the persons nominated and the date, time and place of the meeting, which meeting shall be held not less than 14 nor more than 30 days prior to the meeting. Owners may make additional nominations for election for each position on the ARC by delivery of written notice to the ARC at least one day prior to the meeting. At the meeting, the persons nominated for each respective term shall be voted on separately and the person receiving the largest number of votes cast at the meeting shall be elected to serve for the term specified and until his successor is elected and qualified. Prior to the expiration of each term, the ARC shall nominate a person for election for a three year term. The ARC shall then call a meeting of the Owners by delivery of written notice of the persons nominated and the date, time and place of the meeting not less than 14 nor more than 30 days prior to the meeting. Owners may make additional nominations for such position by delivery of written notice of such nomination to the ARC not less than one day prior to the meeting. At the meeting, the person receiving the largest number of votes cast at the meeting shall be elected to the ARC for a term of three years from the expiration of his predecessor's term, and until his successor is elected and qualified.

(b) Upon the presentation to the ARC of a written petition for the removal of a member of the ARC executed by the Owners of one-third (1/3) or more of the Lots, the ARC shall call a meeting of the Owners and shall deliver written notice of the purpose of the meeting and the date, time and place of the meeting. At the meeting, the member of the ARC named in the notice shall be subject to removal by the Owners, with or without cause, upon the affirmative vote of the Owners of at least fifty percent (50%) of the Lots in favor of such removal. Such removal shall be effective immediately and the vacancy created upon the removal shall be filled in the manner prescribed in Section 8.2(c) above.

8.4 Procedure and Meetings.

(a) The ARC shall elect a chairman and vice chairman and the chairman, or in his absence, the vice-chairman, shall be the presiding officer at all meetings of the ARC. The ARC may meet on a regular basis as well as upon call of the chairman or vice-chairman, and all such meetings shall be held at such places as may be designated by the chairman or vice-chairman. The affirmative vote of a majority of those present in person or by proxy at a meeting of the ARC shall constitute the action of the ARC on any matter which comes before it; provided that a majority of the members of the ARC may delegate the right to act for and on behalf of the ARC to one or more of its members. The ARC is authorized to retain the services of consulting architects, landscape architects, designers, engineers, inspectors and/or attorneys in order to advise and assist the ARC in performing its functions set forth herein. The ARC shall be entitled to a reimbursement from the Association of expenses incurred in connection therewith. The ARC shall have the right from time to time to adopt and establish such rules and regulations as may be determined to be necessary concerning the procedure, notice of meetings and all other matters concerning the conduct of the business of the ARC.

(b) The ARC shall have the right and power to appoint one or more committees of the ARC and to delegate to such committees various responsibilities of the ARC. The members of the committees of the ARC must be Owners but they need not be members of the ARC. Each committee established by the ARC and each member thereon shall serve at the pleasure of the ARC and the authority of each committee may be limited, expanded or revoked by action of the ARC. Each committee shall have the right from time to time to adopt and establish rules and regulations as may be necessary concerning the procedure and conduct of the business of the committee. All decisions of a committee of the ARC shall be subject to the approval of the ARC. Any Owner may appeal any decision of a committee to the ARC, and the decision of the ARC shall be final with respect to such appeals. The ARC shall have the right from time to time to establish rules and procedures for appeals from the committees; provided that in the absence of such rules and procedures, the procedures set forth in Section 8.6 shall be followed with respect to an appeal from a committee of the ARC.

8.5 Architectural Standards. The architectural standards may be established by the ARC with the approval of the Association. The Architectural Standards adopted by the ARC shall be in addition to the provisions and requirements set forth in this Declaration and shall be binding upon and enforceable against all Owners.

8.6 Approval of Plans and Specifications.

(a) **In order to preserve the architectural and aesthetic appearance and the natural setting and beauty of the Development, to establish and preserve a harmonious design for the Development, no improvements of any nature shall be commenced, erected, installed, placed, moved onto, altered, replaced, relocated, permitted to remain on or maintained on any Lot or Building by any Owner, which affect the exterior appearance of any Lot or Building unless plans and specifications therefor have been submitted to and approved by the ARC or the Association in accordance with the terms and provisions of this Section 8.6.** Without limiting the foregoing, the construction and installation of any Buildings and other Improvements, including without limitation, sidewalks, driveways, mailboxes, decks, patios, courtyards, swimming pools, playhouses, awnings, walls, fences, exterior or any other structures, shall not be undertaken, nor shall any exterior addition to or change or alteration be made (including, without limitation, painting or staining of any exterior surface) to any Building or Improvements, unless the plans and specifications for the same have been submitted to and approved by the ARC or the Association in accordance with the terms and provisions of this Section 8.6 .

(b) Prior to the commencement of any Building or other Improvements on any Lot, the Owner thereof shall submit to the ARC plans and specifications and related data for all such

Improvements, which shall include the following (hereinafter collectively referred to as the "Plans and Specifications"):

(i) A survey reflecting the location of the Access Road and the proposed Building Site for the Dwelling;

(ii) Three (3) copies of an accurately drawn and dimensioned site development plan indicating the location of any and all Improvements, including, specifically, the Building to be constructed on the Building Site on said Lot, the location of all driveways, walkways, decks, terraces, patios, other Improvements on or connecting to the Building Site, and the location of the barn and/or Pasture, if any, and the relationship of the same to the Building Site on the applicable Lot.

(iii) Three (3) copies of a foundation plan, floor plans and exterior elevation drawings of the front, back and sides of the Buildings and other Improvements to be constructed on the Lot.

(iv) Three (3) copies of written specifications and, if requested by the ARC, samples indicating the nature, color, type, shape, height and location of all exterior materials to be used in the construction of the Building on such Lott or any other Improvements thereto, including, without limitation, the type and color of all brick, stone, stucco, roofing and other materials to be utilized on the exterior of a Building and the color of paint or stain to be used on all doors, shutters, trim work, eaves and cornices on the exterior of such Buildings.

(v) Three (3) copies of the lighting plan, including specifications, for any exterior lighting to be utilized with respect to such Lot.

(vi) Three (3) copies of a landscaping plan prepared and submitted in accordance with the provisions of Section 8.7 below.

(vii) Three (3) copies of an erosion control plan prepared and submitted in accordance with Section 8.8 below.

(viii) Such fee as may from time to time be imposed by the ARC for the review, approval and inspection of the Plans for such Improvements and the construction thereof pursuant to Section 9.6(c) below.

(ix) Such other plans, specifications or other information or documentation as may be required by the Architectural Standards.

(c) Subject to the provisions of subparagraph (d) below, the ARC shall, in its sole discretion, determine whether the Plans and Specifications and other data submitted by any Owner for approval are complete and acceptable. The ARC shall establish a fee sufficient to cover the expense of ARC in reviewing plans and related data and to compensate any of their respective consulting architects, landscape architects, designers, engineers, inspectors and/or attorneys retained in order to approve such Plans and Specifications and to monitor and otherwise enforce the terms hereof. Notwithstanding anything provided herein to the contrary, an Owner may make interior improvements and alterations within any Buildings or Improvements it maintains or owns that do not affect exterior appearance and, in each case, without the necessity or requirement that ARC approval or consent be obtained.

(d) The ARC shall have the right to disapprove any Plans and Specifications upon any ground which is consistent with the objectives and purposes of this Declaration, including purely

aesthetic considerations, any failure to comply with any of the provisions of this Declaration or the Architectural Standards, failure to provide requested information, objection to exterior design, appearance or materials, objection on the ground of incompatibility of any such proposed improvement with the scheme of development proposed for the Development, objection to the location of any proposed Improvements on any such Lot, objection to the erosion control plan and/or landscaping plan for such Lot or Building, objection to the color scheme, finish, proportions, style of architecture, height, bulk or appropriateness of any Improvement or any other matter which, in the sole judgment of the ARC, would render the proposed Improvement inharmonious with the general plan of development contemplated for the Development. The ARC shall have the right to approve any submitted Plans and Specifications with conditions or stipulations by which the Owner of such Lot shall be obligated to comply and must be incorporated into the Plans and Specifications for such Buildings or Improvements. Approval of Plans and Specifications by the ARC for Improvements to one particular Lot shall not be deemed an approval or otherwise obligate the ARC to approve similar plans and specifications or any of the features or elements for the Improvements for any other Lot within the Property.

(e) Upon completion of its review, the ARC shall return one copy of the Plans and Specifications to the Owner marked "approved," "approved as noted," "disapproved," or "incomplete." In the event the ARC fails to approve in writing any proposed Plans and Specifications within sixty (60) days after complete Plans and Specifications have been submitted, then the Plans and Specifications so submitted will be deemed to have been disapproved. In the event the ARC approves the Plans and Specifications with stipulations or conditions or disapproves the Plans and Specifications, the Owner may then submit the Plans and Specifications directly to the Association for its consideration. The approval, conditional approval or disapproval of such Plans and Specifications by the Association shall be final and binding on the Owner and the ARC. The Association shall note its approval, conditional approval or disapproval on copies of the Plans and Specifications and shall return its copies to the ARC for distribution and retention in accordance with subparagraph (c) above.

(f) Any revisions, modifications or changes in any Plans and Specifications previously approved by the ARC or the Association must be approved by the ARC or the Association in the same manner specified above, subject however to the provisions of Section 8.6(g) above.

(g) If construction of the Building or the Improvements has not substantially commenced (e.g., by clearing and grading, pouring of footing and otherwise commencing framing and other related construction work) within one (1) year of approval by the Association of the Plans and Specifications for such Building or other Improvements, then no construction may be commenced (or continued) on such Lot and the Owner of such Lot shall be required to resubmit all Plans and Specifications for any Building or other Improvements to the ARC for approval in the same manner specified above.

(h) If (A) any Improvements are initiated, installed, maintained, altered, replaced or relocated on any Lot without approval of the Plans and Specifications for the same by the ARC or the Association or (B) the ARC and/or the Association shall determine that any approved Plans and Specifications for any Improvements or the approved erosion control plan (see Section 8.8) and/or landscaping plans (see Section 8.7) for any Lot or Building are not being complied with, then, in either event, the Owner of such Lot or Building shall be deemed to have violated this Declaration and the ARC and/or the Association shall have the right to exercise any of the rights and remedies set forth in Section 8.14 below.

(i) The ARC and the Association, or any agent, employee or representative of either of them, may, at any reasonable time and from time to time enter upon and inspect any Lot or Building or any Improvements being constructed thereon in order to determine whether the approved Plans and

Specifications therefor are being complied with. Any such entry shall not be deemed to be a trespass or any other wrongful act by the ARC and the Association.

(j) **No Owner shall occupy any Building unless and until the Association shall have issued to the Owner a Certificate of Compliance in accordance with the provisions of this Section 8.6(l) and Section 8.15 below.** Upon completion of the construction of any Building, the Owner shall submit a written request to the Association for a Certificate of Compliance. Upon receipt of such request, the Association shall, within ten (10) business days, inspect the Building to determine if the construction is in compliance with the Plans and Specifications approved by the ARC or the Association if required, and promptly upon making such determination, the Association shall either (i) issue to the Owner a Certificate of Compliance in accordance with Section 8.15 below if the Association finds the construction complies with such approved Plans and Specifications; or (ii) deliver to the Owner a written statement setting forth the reason(s) that a Certificate of Compliance will not be issued with respect to such Building.

8.7 Landscaping Approval.

(a) In order to protect and to enhance the aesthetic appearance of the Property, no landscaping, grading, tree removal, excavation or fill work of any nature shall be implemented or installed by any Owner on any Lot unless and until landscaping plans therefor have been submitted to and approved by the ARC as provided in Section 8.6 hereof. The provisions of Section 8.6 above regarding the method that such plans are to be submitted to the ARC, the time for approval or disapproval of the same and the method of approving modifications or changes thereto shall be applicable to such landscaping plans.

8.8 Erosion Control Plan. Owner or the Owner's builder or contractor shall prepare an Erosion Control Plan to be implemented with respect to the construction of Improvements on any Lot. Any such Erosion Control Plan, to be approved by the ARC or the Association, must provide that gravel be placed in the driveway of the Lots during the construction period and that hay and silt fences be utilized during construction to minimize erosion. Such Erosion Control Plan must comply with all terms and conditions of the General Permit issued by the Alabama Department of Environmental Management and made available to Developer regarding storm water runoff from construction, excavation, land clearing and other land disturbance activities within the Property.

8.9 Builder Regulation and Approval. In order to minimize disruption in the Property and to maintain orderliness during construction of Buildings and Improvements on Lots within the Property:

(a) The ARC and/or the Association shall have the right and authority from time to time to propose, adopt, alter, amend and revoke rules and regulations applicable to builders, general contractors and subcontractors who are engaged in the construction of Buildings or Improvements on any Lot within the Property.

(b) The ARC and/or the Association shall have the right to approve an Owner's selection of a builder or contractor, whether a general contractor or subcontractor. No such builder, contractor, or subcontractor shall be approved if, in the opinion of the ARC and/or the Association, such builder, contractor or subcontractor (i) has a history of noncompliance with this Declaration or the rules and regulations adopted by the ARC and/or the Association with respect to builders and contractors in the Property, and such builder or contractor has failed to provide the ARC adequate assurance that it will comply with the requirements of this Declaration and any rules and regulations promulgated thereunder; or (ii) such builder or contractor or subcontractor working thereunder has failed to provide evidence of public liability insurance reasonably acceptable to the ARC and the Association.

(c) The ARC or the Association may require as a condition to the approval of any builder or contractor, whether as a general contractor or subcontractor, to require such builder or contractor to post a bond or other reasonably satisfactory contract for indemnity to cover the cost of repair for any damage caused by such builder or contractor to the roads (including curbs and gutters) and storm water drainage systems.

8.10 Subsurface Conditions.

(a) The Property may be located in an area which includes underground mines, tunnels, sinkholes and subsurface conditions which may result in sinkholes or other types of ground subsidence. The approval of Plans and Specifications by the ARC and the Association for any Building or other Improvements on a Lot shall not be construed in any respect as a representation or warranty by the ARC, the Association or Developer to the Owner submitting such Plans and Specifications or to any of the successors or assigns of such Owner that the surface or subsurface conditions of such Lot are suitable for the construction of the Buildings and other Improvements contemplated by such Plans and Specifications. It shall be the sole responsibility of each Owner to determine the suitability and adequacy of the surface and subsurface conditions of any Lot for the construction of any contemplated Improvements thereon.

(b) Neither the ARC nor the Association, nor the Developer nor its members, agents and employees shall be liable to any Owner or Occupant, or the successors, assigns, licensees, lessees, employees and agents of any Owner or Occupant, for loss or damage on account of injuries to any Lot or parcel of the Property, to any Buildings and Improvements, now or hereafter located upon any Lot or parcel of the Property, or on account of any past or future injuries to any Owner, Occupant, or any other person in or upon any Lot or parcel of the Property, which are caused by, or arise as a result of soil and/or subsurface conditions, known or unknown (including, without limitation, underground mines, sinkholes, radon gas, limestone formations, or other geological formations or conditions) under or on the Property.

8.11 Limitation of Liability. Notwithstanding anything provided herein to the contrary, neither Developer, the ARC, the Association, nor any agent, employee, representative, member, shareholder, partner, officer or director of any of them, shall have any liability of any nature whatsoever for any damage, loss or prejudice suffered, claimed, paid or incurred by any Owner on account of (a) any defects in any Plans and Specifications submitted, reviewed or approved in accordance with the provisions of this Article VIII, (b) any defects, structural or otherwise, in any work done according to such Plans and Specifications, (c) the failure to approve or the disapproval of any plans, drawings, specifications or other data submitted by any Owner for approval pursuant to the provisions of this Article VIII, (d) the construction or performance of any work related to such plans, drawings and specifications, (e) bodily injuries (including death) to any Owner, Occupant or the respective family members, guests, employees, servants, agents, invitees or licensees of any such Owner or Occupant, or any damage to any Buildings, Improvements or the personal property of any Owner, Occupant or the respective family members, guests, employees, servants, agents, invitees or licensees of such Owner or Occupant, which may be caused by, or arise as a result of, any defect, structural or otherwise, in any Buildings or Improvements or the Plans and Specifications therefore or any past, present or future soil and/or subsurface conditions, known or unknown (including, without limitation, sinkholes, underground mines, tunnels and water channels and limestone formations on or under any Lot) and any other loss, claim, damage, liability or expense, including court costs and attorneys' fees, suffered, paid or incurred by any Owner arising out of or in connection with the use and occupancy of any Lot or any Building or Improvements situated thereon.

8.12 Commencement and Completion of Construction. Upon commencement of construction of any Building, construction work thereon shall be prosecuted diligently and continuously, and, unless a longer period of time is approved by the ARC, construction of a Building shall be completed

within one (1) year of the commencement date of said construction.. Such completion shall be evidenced by a certificate of occupancy issued by the appropriate Governmental Authorities and a Certificate of Compliance issued by the Association.

8.13 Sales and Construction Activities. Notwithstanding any provisions or restrictions contained in this Declaration to the contrary, Developer, its agents, employees, contractors, successors and assigns, shall have the right and option to maintain such facilities and to carry on such activities as may be reasonably required, convenient, or incidental to the completion, improvement, and sale of Lots or the development of Lots, Buildings, Common Areas and Green Spaces, including, without limitation, the installation and operation of sales and construction trailers and offices, signs and Building models, all as may be approved by Developer from time to time; provided, however, that the location of any construction trailers of any assignees of Developer's rights under this Section 8.13 shall be subject to Developer's approval. The right to maintain and carry on such facilities and activities shall include, without limitation, the right to use Buildings as model residences and as offices for the sale of Lots and/or Buildings and for any related activities.

8.14 Enforcement and Remedies. In the event any of the provisions of this Article VIII 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, to do any or all of the following: (a) deny a contractor access to the subject Lot 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 of Improvements on any Lot 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 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 VIII, 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 VIII shall be paid by such Owner as an Individual Assessment under Section 6.2 hereof, and if the same is not paid when due, shall bear interest and shall be subject to the lien provided for in Section 6.1 hereof and shall be subject to foreclosure as provided therein. Notwithstanding anything provided herein to the contrary, the rights and remedies of the Association set forth herein including any other rights and remedies which the ARC or the Association may exercise at law or in equity or any of the enforcement rights specified in this Declaration, including without limitation, Sections 9.35, 12.1, 12.2 and 12.3 below.

8.15 Certificate of Compliance. The Certificate of Compliance issued by the Association shall be in form suitable for recordation, identifying the subject Building or Improvement and the Lot on which such Building or Improvement is placed, and stating that the Plans and Specifications, the location of such Building or Improvement and the use or uses to be conducted thereon have been approved as herein required, that such Building or Improvement as constructed complies with the requirements of this Article VIII, and that there are no outstanding unpaid assessments against the Owner under this Declaration. Preparation and recording of such certificate shall be at the expense of such Owner. A Certificate of Compliance shall be prima facie evidence of the facts therein stated, and as to any purchaser or encumbrancer in good faith and for value, or as to any title insurer, such certificate shall be conclusive evidence that all Buildings or Improvements on the Lot, and the use or uses described therein comply with all approvals of the ARC or the Association as required under this Article VIII, that all assessments which

may constitute a lien on such Lot have been paid, and that the Lot and Improvements constructed thereon are in compliance with all other requirements of this Declaration as to which the ARC and the Association exercise any discretionary or interpretive powers.

ARTICLE IX USE AND DEVELOPMENT RESTRICTIONS

9.1 Use Restrictions. Except as otherwise provided to the contrary in Section 8.13 above and in this Section 9.1, each Lot shall be used for single-family residential purposes only and no trade or business of any kind may be carried on in or from any Lot or Building. The use of any portion of a Building as an office by an Owner shall not be considered a violation of this covenant if such use does not create regular customer, client or employee traffic. The leasing or rental of a Building for residential purposes only shall not be considered a violation of this covenant so long as the lease (a) is for not less than the entire Building, (b) is for a term of at least six (6) months and (c) is otherwise in compliance with the rules and regulations promulgated and published from time to time by the Association. Notwithstanding anything provided in this Section 9.1 to the contrary, the Property or any portion thereof, including, specifically, any Lots constituting any portion of the Property, may be used and developed for (i) any of the uses included in the definition of Common Areas and (ii) any uses permitted under applicable zoning ordinances affecting the Property; provided, however, that in the event any portion of the Property is to be developed or used for any purpose other than Common Areas, or single-family residential purposes, then such use must be approved in writing by the Association.

9.2 ARC or Association Approval. No Buildings or other Improvements of any nature whatsoever shall be constructed on any Lot unless such Building and/or Improvements have been approved by the ARC or the Association in the manner set forth in Article VIII above. No Building shall be occupied by any person until the Owner shall have received a Certificate of Compliance from the Association pursuant to Section 8.6(l) and Section 8.15 of this Declaration.

9.3 Underground Utilities. The lot owner shall be solely responsible for the cost and expense of the installation of all utilities used on any lot up to the lot line. Furthermore, all electrical power transmission lines on any lot shall be required to be installed underground up to the lot line. The Developer shall not be responsible for the cost and expense of installing or maintaining any utilities, including underground electrical power, used on any lot up to the lot line. All utility lines, pipes, conduits and wiring for electrical, gas, telephone, water, sewer, cable television, security and any other utility service for any portion of the Property shall be installed and maintained below ground to the extent practicable.

9.4 Building Sites. Prior to commencing any construction related activities on a Lot (including grading and clearing), the location of the Building on the Building Site and the location of other Improvements in relation to the Building Site shall be set forth in the Plans and Specifications submitted to the ARC in accordance with Section 8.6(b) above. All eaves, steps, porches, terraces, decks and patios shall be deemed a part of the Building for purposes of locating the Building on the Building Site.

9.5 Setbacks. All single family residences or other authorized structures shall comply with the following setback requirements: Subject to the provisions set forth below, minimum building setback lines for all residences shall be established either (i) on the recorded subdivision plat for the subdivisions of which such lot is included. No Residence shall be built within the setback areas established in accordance with any of the procedures specified above. Prior to commencing any construction-related activities on any lot, the location of any residence to be constructed thereon shall be set forth on the site development plan for such lot which must be approved by the Architectural Review Committee (the "ARC"). Notwithstanding anything provided above to the contrary, the ARC may require building setbacks which are greater than those specified above. The Developer nor the ARC may grant a variance

in violation of the City of Vestavia Hill's minimum setback requirements, without permission from the City of Vestavia Hills.

9.6 Floor Area Requirements. All single family residences or other authorized structures shall comply with the following floor requirements:

No structure, including but not limited to single family residences, shall be constructed without the approval of the ARC. Minimum structure sizes as to heated living areas only excluding basements are as follows:

2700 Square feet for a one (1) level home

3000 square feet for a one and one half (1 & 1/2) or two (2) story home.

9.7 Design Requirements. The Buildings to be constructed on a Lot for use as a residence by the Occupant and guests and invitees of the Occupant may be in a single structure or not more than three (3) interconnecting structures.

9.8 Drainage. The lot owner shall be responsible for the draining of all surface waters on the lot so as not to increase the natural drainage across neighboring lots. The lot owner shall also be responsible for draining and silt control during the construction and landscaping of its lot. Any lot that violates the Alabama Department of Environmental Management's ("ADEM"), or its successor's, requirements for stormwater runoff will be required to remedy the problem immediately. If the Developer brings any lot into compliance, the lot owner shall immediately reimburse developer for any and all costs incurred. If ADEM fines are imposed because of said violations, lot owner will pay all fines and attorneys' fees incurred. The lot owner acknowledges that development shall take place in complete compliance with the restrictions set forth in any NPDES General Permit issued to Developer for FIVE OAKS. No site preparation or construction activities are to take place until a plan for storm water control and pollution prevention plans have been approved by Developer, its successors or assigns. In the event pollution prevention and storm water control measures are not implemented or are determined to be inadequate, the developer reserves the right to correct said defects and the lot owner shall be responsible to the developer for the costs of said correction.

9.9 Lot Maintenance. Each owner of any lot shall at all times keep and maintain said lot and improvements thereon in a clean, orderly, and attractive condition, maintaining and repairing the residence promptly as conditions may require. All trash, rubbish, garbage, grass, leaves, tree limbs, weeds, vines, and other waste materials shall be removed for proper disposal from a lot as soon as is practical, and prior to removal, the same shall be stored on the lot out of sight and in a neat and orderly manner so as not to interfere with the aesthetics, health or welfare of other homeowners. No such material shall be placed or stored on any street or public right of way. No open burning shall be permitted on any lot or any other part of the FIVE OAKS Subdivision, except that outdoor fireplaces, grills and chimneys may be used provided they are so constructed and equipped with fire screens as to prevent the discharge of any ashes, embers, or other particulate matter, and in compliance with local, state and federal laws. If the owner of any lot fails to fulfill the obligations and covenants under this paragraph, then the Association may, in its discretion, take appropriate action and bill all costs associated with any such action to the lot owner.

9.10 Windows and Yards. All windows shall be wood framed, vinyl or encased. Metal windows of any kind will not be permitted. All front, back and side yards must be sodded, except in natural areas.

9.11 Sight Easements. No fence, wall, tree, shrub, or bush shall be erected or planted in such a way as to prevent any pedestrian or operator of a motor vehicle from having clear, open and safe scope of vision at any intersection, corner, or other adjoining of streets, or as to obstruct passage on public right of way. Height of shrubbery near intersections not to exceed thirty (30) inches.

9.12 Landscaping.

(a) The landscaping plan for each Lot in the Development shall be submitted to the ARC for approval pursuant to the provisions of Section 8.6 above. For purposes of Section 8.6, landscaping approval shall not be required for the planting or installing of flowers or small shrubs on the Building Site unless such violate the Architectural Standards or the terms or provisions of this Declaration. Each Owner shall, to the extent practicable, incorporate into the landscaping plan for his Building Site the natural plant life existing on the Lot and shall otherwise take such steps which would to the extent practicable preserve the existing trees, plant life, wild flowers and natural environment, including natural drainage channels.

(b) The landscaping plan submitted to the ARC for the construction of a Building shall include, without limitation, the following:

(i) adequate foundation, shrubbery and ground cover for landscaped areas within the Building Site with only pine straw, shredded bark or pine bark to be used for mulching shrub beds and natural areas;

(ii) irrigation system shall be installed in the landscaped areas within the Building Site;

(iii) no Building Site shall be sodded with grass unless approved by ARC; and

(c) All landscaping for a Lot shall be completed in accordance with the landscaping plan approved by the ARC no later than thirty (30) days following the issuance of a Certificate of Compliance for the Building situated thereon.

(d) No Owner shall be allowed to divert or obstruct surface water from its drainage channels or otherwise divert or obstruct surface water so as to adversely impact adjoining or neighboring Lots or Buildings. The determination of whether any such diversion or obstruction of surface water exists shall be made by the Association, whose determination shall be final, conclusive and binding on all Owners and Occupants.

(e) No bird baths, fountains, reflectors, flag poles, statues, lawn sculptures, lawn furnishings, artificial plants, rock gardens, rock walls, bird houses or other fixtures and accessories shall be placed or installed within any Lot.

(f) No vegetable, herb or similar gardens or plants shall be planted or maintained in any area within a Lot except for the Building Site.

9.13 Exterior Lighting. All exterior lighting for any Building, including, without limitation, free standing lighting and utility lights attached to a Building, must be approved by the ARC.

9.14 Fences. It is the intention of the Developer that a uniform type of wood fencing is to be used on all lots where fencing is desired. No fences of any kind or material shall be permitted within the Property except as approved by the ARC. The type of materials utilized for, including the color thereof,

and the location of all fences must be approved by the ARC prior to installation. Where any lot owner intends to install fencing and no adjoining lot owner has installed fencing or intends to install fencing at the same time, said lot owner shall install the fencing whereby the finished side of the fence is facing outward on all sides installed. Where fences are to be installed at the same time on adjoining lots, the owners of said lots shall install a common fenced area on the adjoining boundary line of said lots; lot owners to pay for costs and perform maintenance on lot owner's respective side of the fence.

9.15 Driveways. It is the intention of the Developer that all driveways, unless specifically excepted to by the Developer, be paved with a concrete material and that a uniform type of concrete material be used; the location of all driveways and the materials utilized for must be approved by the ARC prior to installation

9.16 Clothes Lines. No clothes lines are permitted.

9.17 Garage Openings. No garage door openings may face the street.

9.18 Satellite Dishes. Subject to approval of the ARC as to size, appearance, and location, miniature satellite dishes which are no more than 24 inches in diameter may be allowed on any Lot or Building. Radio antenna, radio receiver or other similar device or aerial may be attached to or installed on any Lot or Building with the approval of the ARC.

9.19 Outdoor Furniture, Recreational Facilities and Clotheslines.

(a) No furniture shall be placed, kept, installed, maintained or located on any areas of a Lot other than the Building Site. Any furniture placed, kept, installed, maintained or located on a Building Site shall not be visible from any street.

(b) Children's toys, swing sets, jungle gyms, trampolines and other outdoor and recreational equipment and appurtenances shall be allowed on a Building Site and shall, to the extent practicable, be located so that the same are not visible from any street.

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

(d) Basketball goals shall be located in a location approved by the ARC and the Association. Basketball goal backboards should be of clear plexiglass or acrylic, and shall not be located in a location other than the Building Site unless specifically approved by the ARC and the Association.

(e) Barbecue grills or other types of outdoor cooking equipment and apparatus shall be located only on the Building Site and, to the extent practicable, shall not be visible from any street.

9.20 Pets. No animals, birds or reptiles shall be kept or be possessed in the FIVE OAKS Subdivision by any person owning a lot, except for commonly accepted household pets. Any such pet shall be kept by any homeowner within the limitations of the lot and residence thereon, and no pet shall be permitted to leave said lot or residence without being controlled at all times by the owner. No kennels will be allowed. No kennel shall be constructed or operated on a Lot. Dogs and cats shall not be allowed to roam unattended within the Development. Pets shall not be permitted to leave excrement on the Lot of any other Owner or within any portion of the Common Areas and the Owner of such pet shall immediately remove the same. Each Owner shall be liable to the Association for the costs of repairing any damage to the Common Areas caused by the pet of such Owner or Occupant. The Association shall have the right

from time to time to promulgate rules and regulations governing keeping the pets within the Development, including the right to assess fines for violations of such rules and regulations.

9.21 Trash, Rubbish and Nuisances.

(a) No trash, garbage, rubbish or debris of any kind shall be dumped, placed or permitted to accumulate upon any portion of the Property nor shall any nuisance or odors be permitted to exist or operate upon or arise from any Lot which would render any portion thereof unsanitary, unsightly, offensive or detrimental to persons using, occupying or owning any other Lots within the Development. Each Owner shall be responsible for the removal of trash and rubbish from the Lot on a regular basis.

(b) Noxious or offensive activities shall not be carried on in or from any Lot or Building or in any part of the Common Areas, and each Owner and Occupant shall refrain from any act or use of a Lot which could cause disorderly, unsightly or unkempt conditions, or be in violation of any law, statute, ordinance rule, regulation or requirement of any Governmental Authority. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices, other than security and fire alarm devices used exclusively for such purposes, shall be located, used or placed upon any Lot or Building or other portion of the Property.

(c) Trash, garbage and any other refuse or waste shall not be kept on any Lot except in sanitary containers or garbage compactor units. Trash cans and containers shall at all times be kept at the rear of or inside a Dwelling and shall be screened from view from the street by appropriate landscaping or fencing approved by the ARC and the Association.

(d) Unless otherwise provided in these covenants, no outdoor burning of trash, garbage, leaves, wood, shrubbery or other materials shall be permitted on any Lot.

9.22 Recreational Vehicles and Machinery and Equipment.

(a) The Association shall have the right at any time and from time to time to adopt rules and regulations with respect to the keeping, storage, parking, operation, use or maintenance of, tractors, equipment, machinery, trailers (with or without wheels), motor homes, trucks (other than pick-up trucks), commercial vehicles of any type, campers, motorized campers or trailers, boats or other watercraft, boat trailers, motorcycles, motorized bicycles, all-terrain vehicles, motorized go-carts and other forms of transportation.

(b) Each Lot shall provide for adequate off-street parking (i.e., parking areas located solely within the Lot). Vehicles shall be parked only in driveways constructed in accordance with the provisions of Section 9.29 above or in Buildings with garages.

(c) Any vehicle which is inoperable shall be immediately removed from the Property. No Owner or Occupant shall repair or restore any vehicle, machinery or equipment of any kind upon or within any Lot or within any portion of the Common Areas, except (i) within enclosed garages or workshops or (ii) for emergency repairs and then only to the extent necessary to enable the immediate movement thereof to a proper repair facility located outside of the Property.

9.23 Signage. All signs, billboards or advertising structures of any kind are prohibited. Notwithstanding anything herein to the contrary, the Developer and the Association shall have the right but not the obligation to erect and maintain reasonable and appropriate signs in the Common Areas and the easement areas created under Article III hereof. No signs, billboards, posters or other advertising matter or displays of any kind shall be permitted anywhere in the FIVE OAKS Subdivision except as provided

herein. Unless otherwise permitted by Alabama law, signs and posters affixed to street signs are prohibited, and the Association shall bill all costs associated with the removal of posted signs and posters to the lot owner or person that posted them. The Developer or ARC may, at its discretion, adopt and promulgate rules and regulations relating to signs which may be employed. The Developer and its approved builders shall be allowed to install their signage.

9.24 Nuisances. No substance, thing or material shall be kept upon any lot that will emit foul or obnoxious odors, or that will cause any noise that will or might disturb the peace, quiet, comfort or serenity of the occupant of surrounding property. No boat, boat trailer, house trailer, trailer, motor home, truck, commercial vehicle, motorcycle, golf cart, or any other similar item shall be stored in the open on any lot for a period of time in excess of twenty-four (24) hours.

9.25 Mailboxes. All mailboxes and posts must be of a design specified by the Developer.

9.26 Temporary Structures. Except for the construction and development activities of Developer or an approved builder, no temporary structure of any kind shall be used, or placed upon the lot, including, but not limited to trailers, campers, shacks, tents, outbuildings, or auxiliary structures. However, outbuildings such as pool houses that are on foundation, wired and plumbed and that are consistent with the neighborhood may be approved by the ARC, at its discretion.

9.27 Sidewalks. Sidewalks shall be installed on both side of all public streets. Sidewalks are to be installed in accordance with the regulations of the City of Vestavia Hills and are to be installed upon completion of the principal building. Sidewalks shall have a minimum width of five (5) feet and the same width as the sidewalks on the lots to either side (or a width determined to be suitable by Developer where no adjoining sidewalks have been constructed) and in the same position relative to the curb of the street. A strip of grass must separate the edge of the sidewalk from the street on which it adjoins and the owners shall maintain such grass strip in a neat and trim appearance. Developer reserves the right to grant a variance for or grandfather in preexisting sidewalks.

9.28 Construction of Improvements.

(a) During the construction of any Improvements or Building, (i) all Lots shall be maintained in a clean condition, free of debris and waste material, (ii) all unused construction materials shall be stored, to the extent practicable, on the Building Site, and (iii) all construction trash, debris and rubbish on each Lot shall be properly disposed of outside the Development at least weekly. Used construction materials may be burned on-site so long as such burning does not create a nuisance to other Owners or violate the laws, ordinance, codes, statutes, rules or regulations of any applicable Governmental Authority; in no event, however, shall any used construction materials be buried on or beneath any Lot or any other portion of the Property.

(b) During the construction of any Improvements or Dwellings, construction equipment and the vehicles of all contractors, subcontractors, laborers, materialmen and suppliers shall (i) utilize off-street parking to the extent available, and (ii) enter the Lot on which such Improvements are being constructed only from the driveway for such Lot.

(c) No construction trucks, equipment or machinery, including any trailers used for the transportation of construction equipment or machinery, shall be parked overnight on any roads within the Development. Upon completion of construction of any Improvements or any Building, all construction machinery, tools and equipment, all unused construction materials and all trash, debris and rubbish shall be immediately removed from the Lot and such Lot shall be kept and maintained in a clean and uncluttered condition.

(d) All Buildings and any other Improvements shall be constructed in compliance with the Architectural Standards and all applicable federal, state, county and local laws, ordinances, rules, regulations and zoning and building code requirements. Each Owner shall be solely responsible for obtaining from the appropriate Governmental Authorities all necessary permits and licenses and otherwise paying all required fees for the construction of any Improvements on such Owner's Lot. Each Owner shall also be responsible for strict compliance with the Plans and Specifications for the Building, the landscaping plan for the Lot, the Erosion Control Plan, as well as any other applicable watershed protection or soil erosion requirements, and other governmental requirements, both during and after completion of construction of any Improvements on such Owner's Lot. **In the event that the Owner or any of his contractors or agents shall be in violation of the aforesaid requirement, the Association or the ARC shall have the right to exercise any of the remedies set forth in Section 9.35 below.**

9.29 Subdivision and Interval Ownership. No Lot may be subdivided or resubdivided and no Building Site may be relocated without the prior written approval of the Association. No Lot or Building shall be sold or owned under any time-sharing, time-interval or similar right-to-use programs.

9.30 Swimming Pools Swimming pools, outdoor hot tubs, reflecting ponds, saunas, whirlpools, and lap pools may be constructed, installed and maintained on any Lot subject to the prior written approval of the plans for the same by the ARC or the Association in accordance with the covenants, conditions and restrictions contained. Above-ground pools shall not be permitted. The Association shall have the right to adopt further rules and regulations governing the construction of swimming pools, other outdoor water features or amenities within the Property.

9.31 Common Areas. No Owner or Occupant may construct, install, place, erect or otherwise maintain any Improvements, vehicles or devices of any nature on or within a Common Area.

9.32 Additional Regulations. In addition to the restrictions set forth in this Declaration, (i) each of the ARC and the Association shall have the right, in its sole discretion, from time to time and at any time to adopt, modify and amend the Architectural Standards in order to impose such other, further or different requirements or restrictions which shall be binding on all Owners, Lots and Buildings, including the adoption of additional or more specific requirements and restrictions governing the improvement and use of any Lot and (ii) the Association shall have the right from time to time and at any time to adopt, modify and amend such rules and regulations as the Association, in its sole discretion, determines to be in the best interests of all Owners with respect to the use, maintenance and repair of the Common Areas in the Development, which rules and regulations shall be binding on all Owners, Lots or Buildings. In the event the Architectural Standards of the ARC shall be in conflict with the Architectural Standards of the Association, the Architectural Standards of the Association shall govern.

9.33 Variances. The Association, in its sole and absolute discretion, shall have the exclusive right to grant variances with respect to the provisions of Article IX above and this Article X with respect to any Lot or Building. Any variance request submitted to the Association shall be in writing and, upon approval of the same by the Association, shall be evidenced by a written variance executed by the Chairman, President or a Vice President of the Association.

9.34 Enforcement and Remedies. In the event any of the provisions of this Article IX is breached or is not otherwise being complied with in all aspects by any Owner or Occupant or the respective family members, guests, invitees, agents, employees or contractors of any Owner or Occupant, then the Association or the ARC shall each have the right, at their option, to do any or all of the following: (a) require cessation of such violation or noncompliance and/or (b) through their designated agents, employees, representatives and independent contractors, enter upon such Lot or Building and take all action necessary to extinguish or correct such violation or breach. All costs and expenses incurred by the

ARC or the Association in enforcing any of the provisions of this Article IX, including, without limitation, attorney's fees, court costs, costs and expenses of witnesses, engineers, architects, designers, land planners and any other persons involved in the correction of any noncompliance or the removal of such violation or in any judicial proceeding, together with any other costs or expenses incurred by the ARC or the Association in connection therewith, shall be paid by such Owner who has violated or breached any of the provisions of this Article IX, shall constitute an individual Assessment to such Owner pursuant to Section 6.2 of this Declaration, and if the same is not paid when due, shall bear interest, and shall be subject to the lien provided for in Section 6.1 of this Declaration, and shall be subject to foreclosure as provided for therein. Notwithstanding anything provided herein to the contrary, the rights and remedies of the ARC and 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 of the enforcement rights specified in this Declaration in Sections 8.14, 9.34, 9.33, 9.35, and Article XII of this Declaration.

ARTICLE X CASUALTY, CONDEMNATION AND INSURANCE

10.1 Damage or Destruction to Common Areas.

(a) In the event of any damage or destruction to any of the Common Areas by fire, flood or other casualty, then, subject to the terms and provisions of this Article X, the Association shall promptly repair, replace and restore the damaged portions of the Common Areas to the condition to which they existed immediately prior to such fire, flood, or other casualty.

(b) Notwithstanding anything provided in Section 10.1(a) above, in the event the amount of insurance proceeds, if any, recovered as a result of such damage or destruction is insufficient to fully repair, replace and restore the damaged portions of the Common Areas, and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, then the Board of the Association may levy (i) an extraordinary Common Area Assessment in the case of damage to Common Areas against all Owners, without the necessity of a vote of the Owners approving or disapproving the same pursuant to Sections 7.4 and 7.5 above, which such extraordinary Common Area Assessments shall be in an amount sufficient to provide funds to pay the remaining costs necessary to repair, replace or restore the Common Areas to the condition as existed immediately prior to such fire or other casualty; or (ii) elect to partially repair, replace and restore, or to remove and clean-up, the damaged portions of the Common Areas. Such extraordinary Common Area Assessments shall be levied against each Owner as provided in Section 7.2 above; provided that the percentage share for each class of Lots with respect to the extraordinary Common Area Assessment shall be the same as the percentage share of such class of Lots for the then current annual Common Area Assessment. Further extraordinary Common Area Assessments may be made by the Board, without the necessity of a vote of the Owners approving or disapproving the same, at any time during or upon completion of any such repair, replacement or restoration if funds are insufficient to cover the costs of such repair or restoration. Any and all insurance proceeds received by the Association on account of any damage to or destruction of any of the Common Areas or any sums paid to the Association under or by virtue of such extraordinary Assessments shall be held by and for the benefit of the Association and shall be disbursed by the Association in payment for the costs of such repair or restoration in such manner as may be determined by the Board of the Association. In no event shall the Owner or Mortgagee of any Lot or Building be entitled to any portion of the proceeds of insurance payable as a result of the damage to or destruction of any portion of the Common Areas.

10.2 Damage or Destruction to Buildings. In the event of any fire or other casualty which damages or destroys any portion of any Lot or Building, then the Owner of such damaged Lot or Building shall promptly repair and otherwise restore such Lot or Building to the condition to which the same existed

immediately prior to such fire or other casualty or remove any remaining damaged or destroyed Improvements from the Lot and leave such Lot or Building and any remaining Improvements thereon in a clean, safe, orderly and sightly condition; provided, however, that any such restoration or repair shall be subject to compliance with all of the terms and provisions set forth in Article VIII of this Declaration, and all then applicable rules, regulations, statutes and ordinances of the Governmental Authorities. Any such repair, restoration or removal shall be commenced within one hundred eighty (180) days following the occurrence of such fire or other casualty.

10.3 Condemnation of Common Areas.

(a) In the event of the taking of all or any portion of any of the Common Areas as a result of, in lieu of, or in anticipation of the exercise of the right of eminent domain, condemnation or by private purchase in lieu thereof, then the award from such taking or sale in lieu thereof shall be paid to the Association and shall be disbursed or held as follows:

(i) To the extent the Common Areas subject to such taking can either be restored or replaced, then, to the extent practicable, the Board of the Association is hereby empowered and authorized to take such action, including the purchase of any remaining lands within the Development or the utilization of any other Common Areas within the Development, to restore, rebuild or replace, as the case may be, those portions of the Common Areas subject to such taking. If the award is insufficient to fully defray the cost of such repair or replacement and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, then the Board of the Association may levy an extraordinary Common Area Assessment against all Owners, without the necessity of a vote of the Owners approving or disapproving the same pursuant to Sections 7.4 and 7.5 above, which such extraordinary Common Area Assessments shall be in an amount sufficient to provide funds to pay the remaining costs of repair, restoration or reconstruction. Such extraordinary Common Area Assessments shall be levied against each Owner as provided in Section 7.2 above; provided that the percentage share for each class of Lots with respect to the extraordinary Common Area Assessment shall be the same as the percentage share of such class of Lots for the then current annual Common Area Assessment. Further extraordinary Common Area Assessments may be made by the Board without the necessity of a vote of the Owners approving or disapproving the same, at any time during or upon the completion of any such repair, replacement or restoration of the Common Areas if the award received as a result of such taking is insufficient to pay the costs of such repair or restoration.

(ii) To the extent the Common Areas subject to such taking cannot be restored or replaced or additional lands within the Development cannot be purchased by the Association in order to repair, replace or restore the Common Areas so taken or if the Board of the Association shall determine that the portions of the Common Areas so taken should not be replaced or restored, then in any such event, the net award from such taking shall be retained by and for the benefit of the Association.

(b) If any portion of the award from any taking remains after restoration or replacement of any of the Common Areas, the remainder of such award shall be retained by and for the benefit of the Association, without any claim thereto by any Owner. Except as specifically provided in Section 11.3(c) below, no Owner or Mortgagee of any Lot or Building shall be entitled to any portion of the award made to the Association as a result of the taking of any portion of the Common Areas.

(c) If any such taking or sale in lieu thereof includes all or any part of a Lot or Building and also includes any part of the Common Areas, then the award from such taking shall be

equitably apportioned in accordance with the decision of a court of competent jurisdiction and such award shall be disbursed separately to the Association and to the Owners so affected by such taking; provided, however, that the Owners of any Lot or Building which is subject to any such taking and the Board of the Association may mutually agree on the amount of such apportionment, which mutual agreement shall be binding on all Owners.

10.4 Condemnation of Lots or Buildings. In the event that all or any portion of a Lot or Building is taken as a result of, in lieu of or in anticipation of the exercise of the right of eminent domain, condemnation or by private purchase in lieu thereof, then, to the extent practicable, the Owner of such Lot or Building responsible for the maintenance and repair of such Lot or Building shall promptly repair, reconstruct, rebuild and otherwise restore the remaining portions of the Lot or Building as nearly as practicable to the condition to which the same existed immediately prior to such taking; provided, however, that any such restoration shall be subject to all of the terms and conditions set forth in Article VIII of this Declaration, and all then applicable rules, regulations, statutes and ordinances of the Governmental Authorities. In the event the restoration of such Lot or Building is impracticable or would otherwise violate any of the terms and provisions of this Declaration, then such Owner shall promptly clear away any remaining Improvements damaged or destroyed by such taking and shall leave such Lot or Building and any remaining improvements thereon in a clean, orderly, safe and sightly condition.

10.5 Insurance.

(a) The Board of the Association shall have the authority to obtain and maintain at all times adequate property and casualty insurance in such form as the Board deems appropriate 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 Board, in its sole discretion, may determine.

(b) The Board shall have the authority to obtain and maintain in effect at all times such public liability insurance coverage covering all of the Common Areas and any damage or injury caused by the negligence of the Developer, the Association, and all members, shareholders, directors, officers, partners, agents and employees thereof, in such amounts, with such insurance carriers, at such costs and with such deductibles as the Board, in its sole discretion, may deem necessary or desirable.

(c) The Board shall have the right and authority to obtain workmen's compensation insurance, employer's liability insurance and all other types of insurance required by law, including, without limitation, errors and omissions and directors and officers liability insurance coverage, in such amounts, with such insurance carriers, at such costs and with such deductibles as the Board, in its sole discretion, may determine.

(d) All insurance coverage authorized hereunder shall be written in the name of the Association and all costs thereof shall be a Common Area Expense, as determined in accordance with Sections 7.1(b) hereof. 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 Developer, the manager for the Development, the Association, and the Owners and the family members, servants, agents, tenants and guests of the Owners.

(e) Each Owner shall be solely responsible for obtaining and maintaining public liability, property damage, title and all other types of insurance with respect to his Lot and Building. The Board may require all Owners to carry public liability insurance with respect to their respective Lots and Buildings and to furnish copies or certificates thereof to the Association. Each Owner, by acceptance of a

deed or other instrument conveying any interest in any Lot or Building, does hereby waive and release Developer, the manager of the Development, the Association, and their respective agents, employees, representatives, partners, shareholders, members, managers, officers and directors, from any and all liabilities or damage covered by (or which should be covered by) fire and casualty (e.g., homeowner's and/or builder's risk) insurance and general liability insurance which any Owner maintains, even if such loss or damage has been caused by the fault or negligence of any of the foregoing persons or parties.

ARTICLE XI TERM AND AMENDMENTS

11.1 Term. The terms, covenants, conditions and restrictions set forth in this Declaration shall run with and bind all of the Property, shall inure to the benefit of the Association, Developer, all Owners and Mortgagees and their respective heirs, executors, personal representatives, administrators, successors and assigns, and shall be and remain in effect for a period of ninety-nine (99) years from and after the date hereof, after which time this Declaration shall be automatically renewed and extended for successive and continuous periods of twenty-five (25) years each, unless, at any time after ninety-nine (99) years from the date hereof, an agreement executed by the Owners of at least three-fourths (3/4) or more of the Lots or Buildings within the Property agreeing to terminate or modify this Declaration has been recorded in the Probate Office of Jefferson County, Alabama, provided, however, that the rights of way and easements established, granted and reserved in Article III hereof shall run with the land and shall continue to benefit and burden the Property as therein provided.

11.2 Amendment by Developer. For so long as there is any Lot without a Dwelling constructed thereon within the Development, Developer may amend this Declaration by a written instrument filed and recorded in the Probate Office of Jefferson County, Alabama, without obtaining the approval of any Owner or Mortgagee; provided, however, that except as otherwise provided in Section 11.4 below, (a) in the event any amendment proposed by Developer materially and adversely alters or changes any Owner's rights to the use and enjoyment of his Lot or Building or materially and adversely affects the title to any Lot or Building, then such amendment shall be valid only upon the written consent of the Owners affected thereby (including Developer who shall have the voting rights attributable to any Lots or Buildings owned by Developer) or (b) in the event any such proposed amendment by Developer would materially and adversely affect the title and interest of any Institutional Mortgagee, such amendment shall be valid only upon the written consent thereto of all such Institutional Mortgagees affected thereby. Any amendments made pursuant to this Section 11.2 shall be certified by Developer and shall be effective upon recording of the same in the Probate Office of Jefferson County, Alabama. Each Owner, by acceptance of a deed or other conveyance to a Lot or Building, and each Mortgagee, by acceptance of a Mortgage on any Lot or Building, agrees to be bound by all amendments permitted by this Section 11.2 and further agrees that, if requested to do so by Developer, such Owner and Mortgagee will consent to the amendment of this Declaration or any other instrument relating to the Development if such amendment is (i) necessary to bring any provision hereof into compliance or conformity with the provisions of any law, ordinance, statute, rule or regulation of any applicable Governmental Authority or the judicial decision of any state or federal court, (ii) necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Lots or Buildings, (iii) required by any Institutional Mortgagee in order to enable such Institutional Mortgagee to make a Mortgage loan on any Lot or Building, or (iv) necessary to enable any governmental agency or reputable private insurance company to insure Mortgages on any Lots or Buildings within the Development.

11.3 Amendments by Association. Amendments to this Declaration, other than those authorized by Section 11.2 above, shall be proposed and adopted by the Owners in the following manner:

(a) The Owners of not less than one third (1/3) of the Lots within the Development may submit a written petition to the Association indicating their desire to amend the Declaration which petition shall be signed by said Owners and shall state the proposed amendment with particularity in the petition. The date of delivery of such petition to the Association shall be the record date and the Association shall establish a date, time and place for a meeting of the Owners not less than ten (10) nor more than fifty (50) days after the record date.

(b) The Association shall thereupon deliver written notice of the date, time, place and purpose of the meeting to all Owners on the record date. At the meeting, the proposed amendment must be approved by the Owners holding at least three-fourths (3/4) of the Lots in the Development in order to be adopted; provided, however, that (i) any amendment which materially and adversely affects the security, title or interest of any Institutional Mortgagee must be approved by such Institutional Mortgagee, (ii) during any period in which Developer owns a Lot or Building in the Development, then Developer must approve such proposed amendment, and (iii) to the extent the proposed amendment affects any of the matters described in Section 11.4 below, then the provisions of Section 11.4 below shall be applicable to such proposed amendment.

(c) Any and all amendments which have been approved in accordance with the provisions of Section 11.3(a) and (b) above shall be set forth in a written instrument executed by the proper officers of the Association and such written instrument shall include the sworn statement of the President or the Chairman of the Board of the Association stating unequivocally that the vote of the requisite number of Owners was duly obtained in accordance with the provisions of this Declaration. Any such amendment shall be effective upon recording of the same in the Probate Office of Jefferson County, Alabama.

11.4 Restrictions on Amendment. Notwithstanding anything provided in the Declaration to the contrary, in no event may any amendment to Sections 1.2, 1.3, 1.4, 3.1 through 3.14, 4.2, 4.3, 4.6, 4.8, 6.3, 8.2, 11.2, 11.3, 11.4 and 13.1 hereof or any other provisions of this Declaration which require Developer's consent or approval be effective unless the same is consented to in writing by Developer. The consent of Developer to any such proposed amendment may be withheld in the sole discretion of Developer, with or without any reason.

ARTICLE XII ENFORCEMENT

12.1 Authority and Enforcement.

(a) In the event that the Board of the Association determines that (i) any Owner has failed or refused to discharge properly his or its obligations with regard to the maintenance, cleaning, repair or replacement of items for which he or it is responsible hereunder or (ii) any maintenance, cleaning, repair or replacement for which the Association is responsible hereunder is caused by the willful or negligent act of an Owner or Occupant, or their respective family members, guests, servants, employees, invitees or contractors, and the costs of such maintenance, cleaning, repair or replacement are not paid in full from insurance proceeds, if any, received by the Association with respect thereto, then, in either event, the Association, in addition to the exercise of any of the rights and remedies set forth in this Declaration, may give such Owner written notice of Association's intent to provide such necessary maintenance, cleaning, repair or replacement, at the sole cost and expense of such Owner and setting forth in reasonable detail what action is deemed necessary. Except in the event of emergency situations, such Owner shall have fifteen (15) days within which to complete the same in a good and workmanlike manner or, if the same is not capable of completion within such fifteen (15) day period, to commence such maintenance, cleaning, repair or replacement and to proceed diligently with the completion of the same in

a good and workmanlike manner. In the event of emergency situations or the failure by any Owner to comply with the provisions hereof after such notice, the Association may provide (but shall not be obligated to provide) any such maintenance, cleaning, repair or replacement at the sole cost and expense of such Owner, and said cost shall be a personal obligation of such Owner and shall constitute an individual Assessment to such Owner under Section 6.2 of this Declaration and shall be subject to the lien and foreclosure rights granted pursuant to Section 6.4 of this Declaration.

(b) In addition to the provisions of Section 12.1(a) above, in the event any Owner or Occupant or their respective agents, contractors invitees, violates any of the provisions of this Declaration, or the Architectural Standards promulgated thereunder, the Certificate of Formation, the Bylaws or any rules and regulations adopted by the Board of the Association from time to time, the Board shall have the power to (i) impose reasonable monetary fines which shall constitute an equitable charge and a continuing lien upon the Lot or Building and shall be a personal obligation of such Owner which is guilty of such violation, or (ii) suspend an Owner's or Occupant's right (and the right of such Owner's or Occupant's family members, guests and tenants) to use any of the Common Areas, and the Board shall have the power to impose all or any combination of any of the foregoing sanctions. Any such suspension of rights may be for the duration of the infraction.

12.2 Procedure. In the event any of the terms or provisions of this Declaration and the Architectural Standards promulgated thereunder, the Certificate of Formation, the Bylaws or any rules and regulations of the Association are violated by any Owner or Occupant, or the respective agents, contractors or invitees of any Owner or Occupant, the Board shall not impose a fine, or infringe upon or suspend any other rights pursuant to Section 12.1 above unless written demand to cease and desist from an alleged violation shall be served upon the Owner responsible for such violations which demand shall specify:

- (i) The alleged violation;
- (ii) The action required to abate such violation; and

(iii) A time period of not less than ten (10) days during which the violation may be abated without further sanction, if such violation is a continuing one or if the violation is not a continuing one, a statement that any further violation of the same provision of this Declaration or the Architectural Standards promulgated thereunder, the Certificate of Formation, the Bylaws or any of the rules and regulations of the Association may result in the imposition of sanctions. The foregoing procedure shall only be applicable to the enforcement rights specified in Section 12.1 above and shall not apply to the exercise of any of the rights and remedies specified in any other section or provision of this Declaration.

12.3 Nonexclusive Remedies. Notwithstanding anything provided to the contrary in this Declaration, the authority, enforcement and procedural rights set forth in this Article XII are in addition to and shall not be deemed to limit the other rights and remedies set forth in this Declaration or which the Association, acting through the Board, would have the right to exercise at law or in equity.

ARTICLE XIII MISCELLANEOUS PROVISIONS

13.1 Control by Developer. NOTWITHSTANDING ANYTHING PROVIDED TO THE CONTRARY IN THIS DECLARATION, THE CERTIFICATE OF FORMATION, THE BYLAWS OR IN ANY OTHER DOCUMENT OR INSTRUMENT RELATING TO THE DEVELOPMENT, DEVELOPER HEREBY RETAINS THE RIGHT TO APPOINT AND REMOVE ANY MEMBER OR MEMBERS OF THE BOARD OF THE ASSOCIATION AS PROVIDED BY AND FOR THE

PERIOD OF TIME SET FORTH IN SECTION 4.2 ABOVE. Each Owner, by acceptance of a deed or other conveyance of any interest in a Lot or Building, agrees that Developer shall have the authority to appoint and remove members of the Board of the Association in accordance with the foregoing provisions of this Section 13.1 and the provisions of Section 4.2 above. At such time as there is no Lot without a Dwelling constructed thereon within the Development, or the Developer elects to terminate its exclusive voting rights, whichever shall first occur, a special meeting of the Association shall be called within a reasonable time but not later than 120 days thereafter at which time the Members of the Association shall elect a new Board which shall undertake the responsibilities of the Board and Developer shall deliver all books, accounts and records of the Association, if any, which Developer has in its possession within ninety (90) days after the election of the new Board.

13.2 Legal Expenses. In addition to the rights and remedies set forth in Article XII above, in the event either the ARC, the Developer, or the Association, through their respective agents and representatives, undertake any legal or equitable action which any of them deem necessary to abate, enjoin, remove or extinguish any violation or breach of this Declaration, then all costs and expenses incurred by any of them, including, without limitation, attorneys' fees and court costs, in enforcing any of the terms, provisions, covenants or conditions in this Declaration shall be paid for by the Owner against whom such action was initiated. The ARC, its agents and representatives, and the Association, its agents and representatives, are each hereby authorized to take any and all legal or equitable action as may be necessary under the circumstances to restrain or enjoin any such violation or breach of this Declaration or to otherwise seek monetary damages as a result of any expenses incurred by either the ARC or the Association to cure such violation or breach.

13.3 Severability. If any provision of this Declaration or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Declaration or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each provision shall be valid and enforceable to the fullest extent permitted by law.

13.4 Captions and Headings. The captions and headings contained in this Declaration are for convenience of reference only and shall not be used in the construction or interpretation of any provisions of this Declaration.

13.5 Pronouns and Plurals. All personal pronouns used in this Declaration, whether used in the masculine, feminine or neuter gender, shall include all other genders. The use of the singular tense shall include the plural and the use of the plural shall include the singular.

13.6 Binding Effect. The terms and provisions of this Declaration shall be binding upon, and shall inure to the benefit of Developer, the Association and its members, each Owner, Tenant, Occupant and Mortgagee and their respective heirs, executors, administrators, personal representatives, successors and assigns.

13.7 Conflict or Ambiguity. In the event of any conflict or ambiguity in the terms and provisions of this Declaration, the general rules of construction against one party as a result of that party having drafted this Declaration are hereby waived by each Owner and, to the fullest extent allowed by law, no conflicts or ambiguity shall be resolved in favor or to the advantage of one party as opposed to another in interpreting any ambiguity or conflict contained herein.

13.8 No Reverter. No restriction or provision hereof is intended to be or shall be construed as a condition subsequent or a possibility of reverter in favor of Developer nor shall any provision be deemed to vest any reversionary interest in Developer.

13.9 Interpretation. In all cases, the provisions set forth and provided for in this Declaration shall be construed together and give that interpretation or construction which, in the opinion of Developer or the Board, will best effect the intent of the general plan of development for the Property. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication so as to make them fully effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive. The effective date of this Declaration shall be the date hereof. This Declaration shall be construed under and in accordance with the laws of the State of Alabama.

13.10 Rights of Third Parties. This Declaration shall be recorded for the benefit of Developer, the Association and its Members, the Owners and their respective Mortgagees and by such recording, no other adjoining property owner or third party shall have any right, title or interest whatsoever in the Development of 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.

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

13.12 No Partition. Each Owner, by its acceptance of a Lot or Building, waives any right to seek or obtain judicial partition of any portion of the Development.

13.13 Reservation of Rights. Notwithstanding anything provided herein to the contrary, no sale, transfer, conveyance, lease, pledge, encumbrance or other hypothecation of any Lot or Building by Developer to a 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 this Declaration which Developer is transferring to any such third party.

13.14 Standards for Review. Whenever in this Declaration Developer, the Association or the ARC has the right to approve, consent to, or require any action be taken pursuant to the terms hereof, 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 ARC, as the case may be.

13.15 Oral Statements. Oral statements or representations by Developer, the Association, the ARC or any of their respective employees agents, representatives, successors or assigns, shall not be binding on Developer, the Association or the ARC.

13.16 Notices. Notices required hereunder shall be in writing and shall be delivered by hand or sent by United States Mail, postage prepaid unless a different method for delivery of notice is specified in this Declaration or applicable laws. All notices to Owners shall be delivered or sent to such addresses as have been designated in writing to the Association or, if no such address has been so designated, at the address of such Owner's respective Lot or Building within the Development. All notices to the Association or to the ARC shall be delivered or sent in care of Developer to the following address:

Five Oaks, LLC
Attn: Connor Farmer, Member
120 Bishop Circle
Pelham, AL 35124

or to such other address as the Association or the ARC may from time to time specify in a notice to the Owners. All notices to Developer shall be sent or delivered to Developer at the above address or to such other addresses as Developer may notify the Association.

13.17 Assignment. Subject to the provisions of Section 13.13 above, Developer shall have the right to assign any and all of the rights, powers, reservations and duties contained herein to any person or entity who shall thereupon have the same rights, power, reservations and duties as Developer.

13.18 Further Assurances. Each Owner covenants and agrees to execute, sign and deliver, or cause to be executed, signed and delivered and to otherwise do or make, or cause to be done and made, any and all agreements, instruments, papers, deeds, acts or things, supplemental, conformity or otherwise, which may be reasonably requested by Developer, the Association or the ARC for the purpose of or in connection with clarifying, amending or otherwise consummating any of the transactions and matters herein.

13.19 No Waiver. All rights, remedies and privileges granted to Developer, the Association and the ARC pursuant to the terms and provisions of this Declaration shall be deemed to be cumulative and the exercise of any one or more of such rights, remedies or privileges 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 time to enforce any covenant or restriction set forth herein shall in no event be deemed a waiver of the right thereafter to enforce such covenant or restriction.

13.20 Akin Tract. **AMMIE WHITLEY AKIN** and her husband, **WILLIAM B. AKIN, JR.**, as tenants in common without right of severance for and during the joint lives of the said Ammie Whitley Akin and William B. Akin, Jr., and during the lifetime of the survivor of them, with the indestructible cross-contingent remainder into that **AKIN FAMILY HOLDINGS, LLC – FIVE OAKS SERIES**, an Alabama limited liability company series (collectively, “**Akin**”) join in the execution of this Declaration to acknowledge the submission of their property described on Exhibit “B” attached hereto and made a part hereof to this Declaration. The **Akin Tract**, once made a part of the recorded plat of Five Oaks, will be known as Lot 18 of Five Oaks.

[Signatures on following pages]

This Instrument was prepared by:

Clayton T. Sweeney, Attorney at Law
2700 Highway 280 East Suite 160
Birmingham, AL 35223

IN WITNESS WHEREOF, Developer has caused this Declaration to be duly executed as of the day and year first above written.

Five Oaks, LLC
an Alabama limited liability company

By: _____
Connor Farmer
Member

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned, a notary public in and for said County in said State, hereby certify that Connor Farmer, whose name as Member of FIVE OAKS, LLC, an Alabama limited liability company, 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 member with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal, this the ____ day of _____, 2021.

Notary Public
My Commission Expires: _____

IN WITNESS WHEREOF, Akin has caused this Declaration to be duly executed as of this the _____ day of January, 2021.

Akin Family Holdings, LLC – Five Oak Series,
an Alabama limited liability company

William B. Akin, Jr.

By: _____
William B. Akin, Jr.
Member

Aimee Whitley Akin

By: _____
Aimee Whitley Akin
Member

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned, a notary public in and for said County in said State, hereby certify that William B. Akin, Jr. and Aimee Whitley Akin, whose names as Members of AKIN FAMILY HOLDINGS LLC - FIVE OAK SERIES, an Alabama limited liability company, are signed to the foregoing instrument and who are known to me, acknowledged before me on this day that, being informed of the contents of said instrument, they, as such members with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal, this the _____ day of January 2021.

Notary Public
My Commission Expires: _____

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned, a notary public in and for said County in said State, hereby certify that William B. Akin, Jr. and Aimee Whitley Akin, whose names are signed to the foregoing instrument and who are known to me, acknowledged before me on this day that, being informed of the contents of said instrument, they, executed the same voluntarily on the day the same bears.

Given under my hand and official seal, this the _____ day of January 2021.

Notary Public
My Commission Expires: _____

EXHIBIT "A"

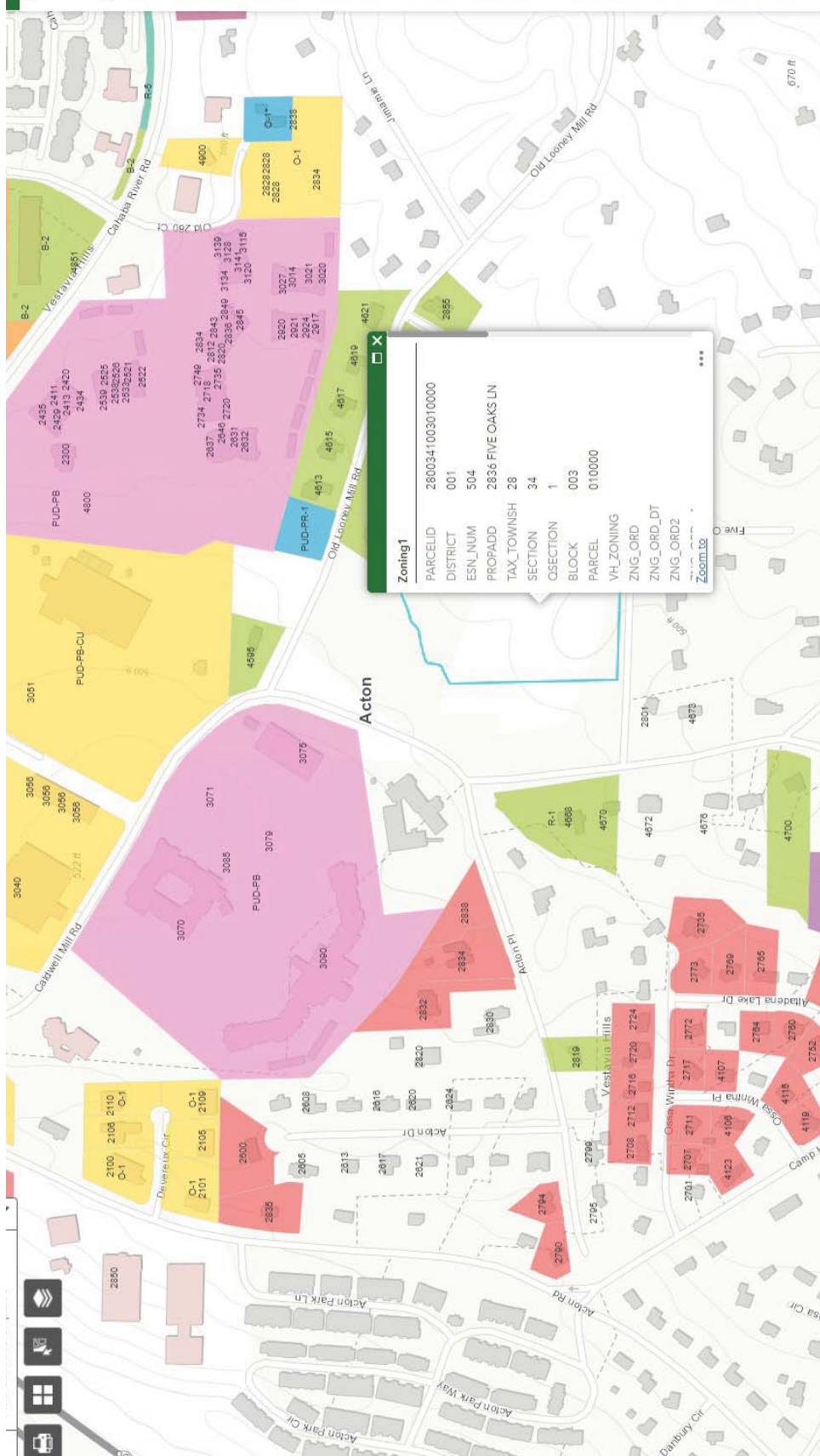
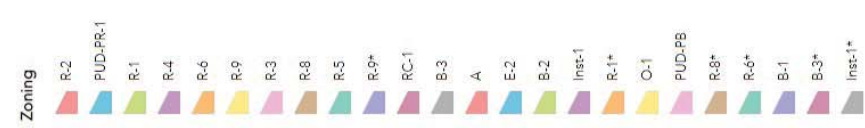
DESCRIPTION OF PROPERTY

EXHIBIT "B"

AKIN TRACT

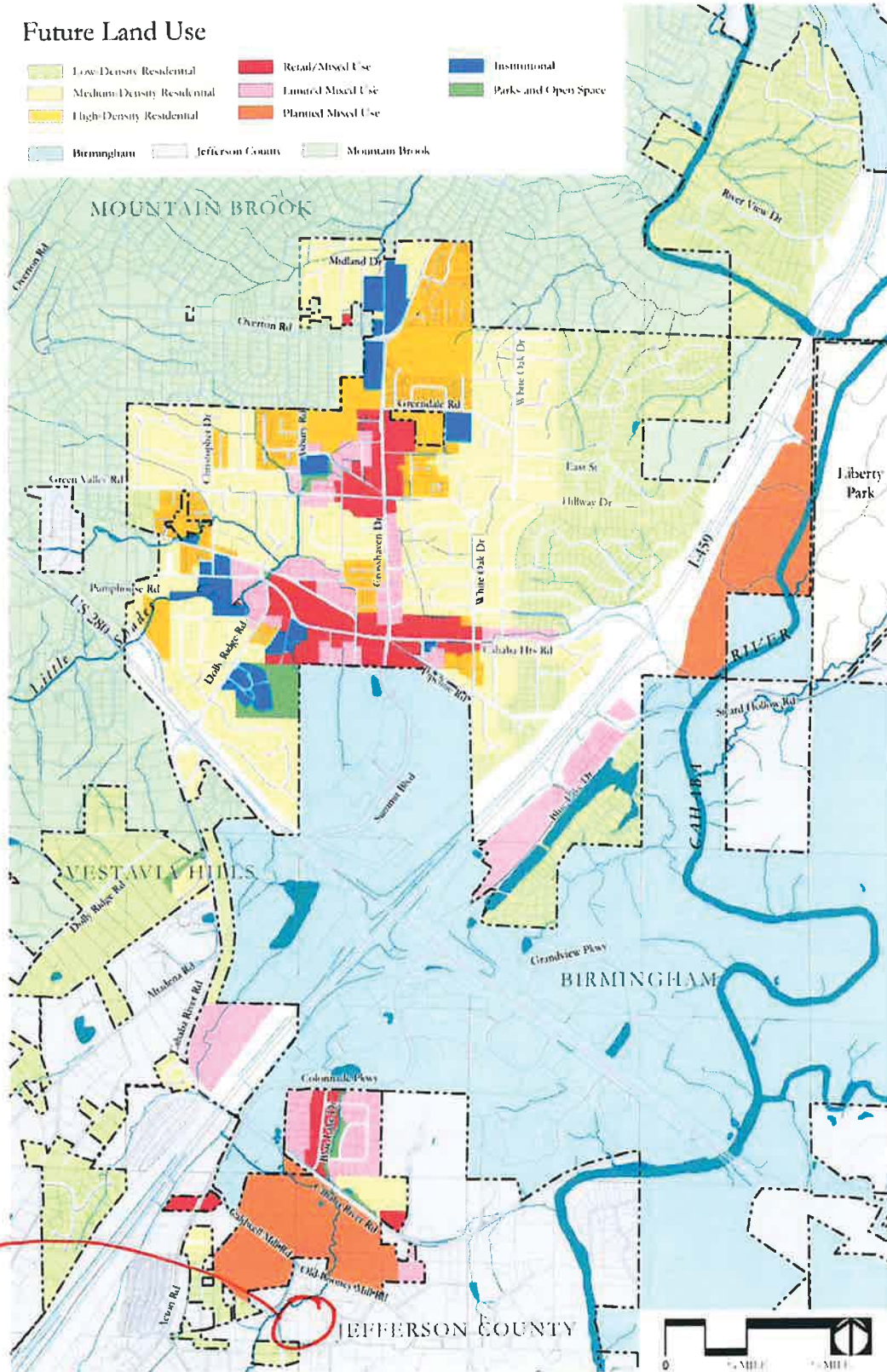
A parcel of land situated in Section 34, Township 18 South, Range 2 West, Jefferson County, Alabama being more particularly described as follows: BEGIN at a 5/8" rebar capped Weygand at the NW corner of Lot 4-B Resurvey of Part of Lot 4 J Arthur Acton Sub-division and Acreage as recorded in Map Book 233 Page 2 in the Office of the Judge of Probate in Jefferson County, Alabama; thence S 18°12'46" E along the west line of Lot 4-B a distance of 59.81 feet to a point; thence S 67°47'37" W leaving said Lot 4-B a distance of 70.11 feet to a point; thence S 87°02'57" W a distance of 67.56 feet to a point; thence N 1°04'33" E a distance of 147.07 feet to a point; thence N 46°20'37" W a distance of 23.90 feet to a point on a non-tangent curve to the right having a central angle of 146°18'17" and a radius of 50.00 feet, said curve subtended by a chord bearing N 29°29'45" W and a chord distance of 95.71 feet; thence along the arc of said curve a distance of 127.68 feet to a point; thence N 10°39'44" W a distance of 165.77 feet to a point; thence N 55°13'48" E a distance of 98.84 feet to a point on the west line of Lot 3-A of Resurvey of Lot 3 and Part of Lot 4 of J Arthur Acton Sub-Division as recorded in Map Book 210 Page 89 in the Office of the Judge of Probate in Jefferson County, Alabama; thence S 18°12'46" E along the west line of Lot 3-A a distance of 399.34 feet to the POINT OF BEGINNING. Said parcel of land contains 1.04 acres, more or less.

Address_Points



Future Land Use

- Low Density Residential
 - Medium Density Residential
 - High Density Residential
 - Retail/Mixed Use
 - Limited Mixed Use
 - Planned Mixed Use
 - Institutional
 - Parks and Open Space
- Birmingham
 Jefferson County
 Mountain Brook



Subject Parcel

Figure 4: Future Land Use Map

#SaveMyAltadena | Voice of the Community

Table of Contents

Executive Summary	2
Open Requests to the Developer	3
1: Storm Water Prevention Pollution Plan (SWPPP)	3
2: Traffic Study + Traffic Calming Plan	3
3: Greenspace Land Trust via Conservation Easement	3
4: Landscape Plan	3
5: Builder(s) selection	3
6: HOA Bylaws and Covenants (including home design restrictions)	3
7: Lighting Plan	3
Annexation and Rezoning	4
Annexation: Like for Like	4
Rezoning: High Density in a Low Density Neighborhood	4
Proposed Home Values	4
Pedestrians and Vehicles	5
Insufficient Vehicle Bridges	5
Vehicle Bridge Options	5
Pedestrian Bridge	5
Pedestrian Bridge Options	6
Traffic Study	6
Traffic Study Options	6
Sidewalks Required	6
Crosswalks Required	6
Road Annexation	7
Environmental	8
Groundwater, Surface Run-Off and Sediment	8
Historical Events and Trends	9
Aggressive Best Management Practices (BMP's) for Water Pollution	9
Water Mitigation Strategies	9
Low Impact Development (LID) Practices	9
Partnership with Freshwater Land Trust (FLT)	10
Wildlife	10
Utility Infrastructure	11
Stormwater Drains	11
Sewer Access	11
Appendix	12

Provide feedback online via <http://bit.ly/MyAltadenaDoc>

Make proposed changes in this doc and they will be reviewed for inclusion

Executive Summary

The 10-acre property at Five Oaks Lane and Caldwell Mill Road (Parcel ID: 28 00 34 1 003 010.000) was sold to a developer, HighPointe Properties, on May 27, 2020 through the investor "Round Too Investments". The new owner of the property is currently planning to annex from Jefferson County to Vestavia Hills and also rezone from an E2 to an R2 creating a subdivision of 17 homes via Resolution #5276. HighPointe Properties plans to work with a small number of custom home builders during the construction phase.

The surrounding community and neighbors of Patchwork Farms and Altadena have collectively reviewed the proposed development of 2810 Five Oaks Lane and identified various areas of interest based on the residents' special knowledge of the property, previous zoning and planning issues of Patchwork Farms, and other local concerns. This document contains a complete view of the input from the community and is intended to help guide and inform the discussions and planning for all relevant parties including:

- [The City of Vestavia Hills](#)
- [Jefferson County](#)
- [Fresh Water Land Trust](#)
- [Cahaba River Keepers](#)
- [HighPointe Properties](#)

Initially, HighPointe Properties' design included 27-29 homes to be rezoned as R9 with amenities to the surrounding neighborhood. The community held multiple neighborhood meetings, met weekly in small groups to define key issues, circulated a petition which gained **400+** signatures, and created plans to actively monitor the development of this parcel. This document is a collaboration of the majority of the local residents' concerns and feedback.

The neighborhood's concerns for the current **17 home** proposed development are:

1. **Pedestrian Safety:** Sidewalks on Caldwell Mill Road starting at Shady Waters to connect with a pedestrian bridge to Altadena Park; Crosswalks at pedestrian intersections
2. **Environmental Impacts:** Increasing runoff and sediment causing flooding to downstream neighbors; Ongoing management of storm water including curbs, storm water drains, retention & detention ponds, swales, culverts and ditches which impact surrounding and downstream properties
3. **Traffic Concerns:** Addition of traffic-calming measures including a stop-sign at the intersection of Caldwell Mill Road and Five Oaks Lane
4. **Road Improvements:** Annexation and improvement of adjacent roads; Improvement of the weight restricted bridge on Caldwell Mill Road prior to heavy construction traffic;
5. **Altadena Preservation:** Protecting the viewshed bordering Altadena Creek and Altadena Park, preserving trees, landscape, lot size, and housing value to fit the context

Open Requests to the Developer

In order to understand the full details of the plan so that they can provide feedback and guidance, the #SaveMyAltadena community group has requested the following to be provided by Connor, of HighPointe Properties and he has agreed. We are currently awaiting a response for the following:

1: Storm Water Prevention Pollution Plan (SWPPP)

This Engineering Plan will define exactly how BMP's will be applied before, during and after development to eliminate environmental impact. EDG has met with the neighborhood and Cahaba River Society to listen to input on this plan and indicated it will be ready December, 2020.

2: Traffic Study + Traffic Calming Plan

It has been agreed that a traffic study is necessary to understand the impact on the neighborhood and recommend appropriate road design and traffic and calming measures.

3: Greenspace Land Trust via Conservation Easement

The Developer has agreed to explore the option of a conservation easement with the Freshwater Land Trust for the ~2.35 acre greenspace.

4: Landscape Plan

This engineered drawing is required by the City of Vestavia Hills and should provide details specifications regarding the exact landscaping which must be installed on the developed areas of the property.

5: Builder(s) selection

The neighborhood is awaiting information regarding which builders will be shortlisted for the construction.

6: HOA Bylaws and Covenants (including home design restrictions)

Many of the finer points of the design and maintenance of the proposed development will be defined in this document. We are specifically looking to define and agree on:

- Home design requirements (size, layout, finishes, etc)
- Landscaping, buffers and greenspace management

7: Lighting Plan

Definition of street and sidewalk lighting including environmentally friendly fixtures.

Annexation and Rezoning

In evaluating the plan to annex and rezone the property, the community has the following concerns, considerations, and proposals intended to ensure the development is suitable to the context of the neighborhood.

The [unincorporated Jefferson County Zoning Map](#) shows the parcel is currently zoned E-2 which requires a ½ acre lot size for each individual home.

Annexation: Like for Like

The neighborhood would strongly recommend that Vestavia does not “Spot Zone” this parcel, but, instead, maintain a consistent zoning from Jefferson County E2 to Vestavia R1. The neighborhood is willing to accept a an adjustment to R2 if a conservation easement for ~2.35 acres is included. Consistent zoning will maintain the density and context of the existing 50+ year-old neighborhood built on horse farms. Rezoning in any other category, especially an R6 or R9, will cause harm to the neighboring property value, natural viewshed, and increase the risk to pedestrians and runners in the area.

Rezoning: High Density in a Low Density Neighborhood

The adjacent neighbors have an average lot size of 1+ acres. The Patchwork Farms and Altadena area proudly maintain the origins of horse farms and estate homes with large land tracts and privacy. Developing a high-density strip within this area is not only inconsistent, but offensive to the established neighborhood.

Proposed Home Values

In the initial development, the plan was to build on ~¼ acre lots will result in an average home price of \$550k-\$650kk. This price is lower than the recent homes built and sold in the neighborhood which averages approx. \$750k. Most recently, the adjacent 2.10 acre home sold in August 2020 for \$1.3M. Another \$1m+ custom home is being built on Acton Pl. Residents in the neighborhood are concerned and want to maintain the home sizes and prices that are consistent with the current market in this area.

Pedestrians and Vehicles

The composition and layout of the neighborhood creates particular challenges which have been observed by the residents and require special consideration in any planning for future improvements. We seek to ensure a safe and sustainable flow of pedestrians and vehicles through this neighborhood's transportation infrastructure.

Insufficient Vehicle Bridges

The Altadena neighborhood has only 2 access points. Within the neighborhood, there are two routes between the access points. The vast majority of the traffic through the neighborhood traverses the Acton Road → Caldwell Mill Road → Camp Horner Road route. The majority of this traffic is "cut-thru," and is currently only impeded by a crosswalk and a 3-way stop sign at Acton Place in front of the "little white church" (Altadena Valley Presbyterian Church).

The 3-way stop is directly adjacent to the 2810 Five Oaks Lane property and sees an average of 1,000+ vehicles per day and dozens of pedestrians. The Caldwell Mill Road bridge is rated for just **3 tons** though it sees an average of **10** large commercial trucks per day, which significantly exceeds this limit (see photos). Use of this bridge for construction-related traffic poses a significant and immediate danger to the safety and reliability of this bridge and the people who use it.

The alternative access route from Acton Road traverses Old Looney Mill Road, which has a 6-ton bridge that is also insufficient for construction traffic. This route would direct heavy equipment through a residential area with significant pedestrian usage and no sidewalks or shoulders.

The final access route to 2810 Five Oaks Lane is via Camp Horner Road. This access point intersection has obstructions installed by Jefferson County which prevent large vehicles from entering the neighborhood. The turn on a curve and winding road presents additional risks.

Vehicle Bridge Options

- A) Upgrade the Caldwell Mill Road bridge to handle the current and expected heavier loads
 - a) Include a pedestrian walkway
- B) Close the Caldwell Mill Road bridge to prevent damage from excessive loads
 - a) This would also address the issue of cut-thru traffic
 - b) This would also address the issue of pedestrian bridge safety
- C) Improve the intersection of Caldwell Mill Road and Camp Horner Road
 - a) Review and improve the preceding section of Caldwell Mill Road by straightening and adding a sidewalk

Pedestrian Bridge

The bridge at Caldwell Mill Road and Acton Place is used by at least a couple dozen pedestrians each day. During LifeTime Fitness running classes, it may see an additional 30 people per day, approximately.

Pedestrians crossing this bridge do not have sufficient protection from vehicles that are using the cut-thru path, as well as speeding. Multiple residents (including this author) have been struck by vehicles due to insufficient pedestrian space.

Pedestrian Bridge Options

- A) Build a dedicated pedestrian bridge adjacent to the vehicle bridge (4-feet wide, approx. cost: \$24k)
- B) Upgrade the Caldwell Mill Road bridge capacity and include a pedestrian path
- C) Close the Caldwell Mill Road bridge and convert it to a pedestrian walkway

Traffic Study

Due to the large volume of traffic (~1,200 per day) using Caldwell Mill Road as a cut-thru, the residents strongly request a traffic study to understand the pattern, speed, and weights of vehicles. Including pedestrian usage in this analysis would provide a more comprehensive view of the neighborhood context. Based on the findings, traffic calming and redirection is requested to preserve the residential context.

Traffic Study Options

- A) Pattern, speed, and weights of vehicles
- B) Pedestrian usage and safety
- C) Traffic calming strategies to reduce impact of cut-thru traffic

Sidewalks Required

It is understood that the City of Vestavia Hills Subdivision Regulations require the inclusion of sidewalks. The residents of Altadena neighborhood agree and confirm the necessity of sidewalks in the following locations:

1. Five Oaks Lane
2. Caldwell Mill Road up to Shady Waters

Crosswalks Required

With the installation of sidewalks, the next required component of pedestrian safety is crosswalks. The residents see the following intersections as having significant pedestrian and vehicular traffic, which warrants the need for crosswalks:

1. Intersection of Caldwell Mill Road and Acton Place
2. Intersection of Caldwell Mill Road and Five Oaks Lane
3. Intersection of Caldwell Mill Road and Shady Waters
4. Intersection of Old Looney Mill Road and the Patchwork Farms Greenway to Altadena Park

Road Annexation

There are sections of Caldwell Mill Road and Old Looney Mill Road which should be annexed to Vestavia Hills as both sides of the road are within City Limits. Currently, these sections of street and their drainage structures are NOT in substantial compliance with city regulations and building codes, and in good condition. This causes hardship for the city residents which must deal with issues such as water runoff from the roadway.

Environmental

There are a number of unique historical and natural characteristics of this neighborhood and the proposed development which require special consideration to preserve the watershed and viewshed.

Groundwater, Surface Run-Off and Sediment

There are significant and valid concerns regarding current and increased volume of groundwater, sediment, surface runoff which impacts the downstream residents. Both Altadena Creek and Altadena Lake have experienced multiple and increasing record-setting flood levels over the past 10 years of rapid development, including Patchwork Farms and Lifetime Fitness resulting in a rising floodplain and damage to stormwater structures.

Residents who border Altadena Creek, including City of Vestavia Hills residents, have experienced a significant increase in the water table and flood plain causing damage and requiring expensive mitigation. These residents are concerned that the volume of impermeable surfaces planned in this development will cause irreversible harm to the property which borders the creek. This proposal will increase watershed pressure on Altadena Creek, which has been ravaged in recent years by the development of the Patchwork Farms area.

Altadena Creek feeds Altadena Lake which has also experienced record-setting flood levels. Unique to Altadena Lake, the large amount of sediment has collected in the lake from all neighboring developments. This has contributed to record high-water and flood levels during normal rainfall. Altadena Lake and its residents cannot bear the financial harm of additional sediment and runoff.

Altadena Lake feeds into the Altadena Valley Country Club which was purchased by the City of Vestavia Hills in 2016. This city property contains a pond which feeds into a poured concrete spillway that feeds directly into the Cahaba River. There are significant undercutting and erosion issues on this property resulting sediment and debris washing into the Cahaba River. This issue is exacerbated by the increasing amount of water.

At present, the Cahaba River is listed as an impaired water under the Clean Water Act for sediment by federal and state regulating agencies (EPA and ADEM). Such a listing requires more stringent scrutiny where potential sediment pollution may be an issue.

The Cahaba River basin is currently under a Sediment and Habitat Alteration TMDL that is intended to reduce the currently excessive sediment loading to the river. Construction run-off may also impact Altadena Lake, both in terms of impairment to aquatic species, as well as colorization. Enhanced Best Management Practices (BMPs) are required in this circumstance (under the TMDL) than for typical development activities. The developer should demonstrate how they have gone above and beyond usual controls.

During construction, it is important for all concerned to implement a water quality monitoring protocol. Such a process should involve monitoring during rain events, both above (upstream) and below (downstream) of the site. Impacts from sediment run-off should be reported immediately to ADEM for investigation. Adequate mitigation and/or penalties should be required for serious impacts due to such run-off.

Historical Events and Trends

Neighbors who live on Altadena Lake are reporting increased flooding within the past few years. Many neighbors on this lake have lived in these homes for 40+ years and have observed the history of the watershed and silt building up in the lake and creek. Previously, 100 year rain events would cause flooding, however, now only rain events with 2" or more are causing flooding of homes and property on the east side of Altadena Lake. (see photos and videos in Appendix).

Recent developments including Patchwork Farms and the Animal Hospital (Jefferson County) on Altadena Creek have increased the sediment and runoff which is causing the increased watershed pressure on this privately owned lake. The lake was last dredged in November of 1995 and around 1980 prior to that. The residents report that following the Patchwork Farms development the lake received a major influx of sediment which has nearly filled the lake.

Vestavia Hills recently purchased the former AVCC property which is being inundated with this additional runoff water. The effects of the increased runoff is having erosion and safety issues on this park and will require increasing investments from the City to manage and maintain.

Aggressive Best Management Practices (BMP's) for Water Pollution

Due to the extreme situation of the Altadena Creek, it has been recommended by multiple experts and organizations to seek BMP's which exceed the minimum requirements. Aggressive investment in BMP's will help protect downstream properties and waterways and help avoid any potential lawsuits. In the meeting with the Developer on September 22nd, 2020 at Altadena Park, Connor Farmer committed to implementing "*three times the minimum requirement*". As such, there is an expectation the water management plan will include:

1. Input from Dr. Haddock of Cahaba River Society
2. Input from Cahaba Riverkeepers
3. Input from Fresh Water Land Trust
4. Use of infiltration swales
5. Oversized retention ponds
6. Significant undisturbed greenspace buffers bordering creek

Water Mitigation Strategies

In keeping with common practices in Vestavia, if a developer seeks a variance or change to the zoning, it would be necessary for the developer to take additional steps in water mitigation that would accommodate the expected adverse impacts (environmental impact/water) that the higher density of homes or other variances created. We recommend the following items for Water Mitigation Strategies:

Low Impact Development (LID) Practices

It is requested to use low impact development (LID) practices within the designated ~2.3 acres of green space/buffer along the low-lying areas along the creek. Vestavia Hill's MS4 Permit requires them to "encourage adoption of LID/GI" techniques. The Cahaba River Society explains that these approaches benefit the builder, the homeowner, and the neighbors. For example, this strategy was an effective water mitigation

practice used by Jonathan Belcher of eSignature Homes in Hoover for developments in conjunction with Spectrum Engineering.

LID practices which are consistent with “green engineering” and LID:

- Regular dredging of silt/sediments from the water retention pond
- Making sure that downspouts do not pour directly onto the drive way
- Re-using shale and other construction by-products/materials for water absorption
- Creation of bio-swales on slopes that feature water-loving native trees

Partnership with Freshwater Land Trust (FLT)

In order to protect the tributary to the Cahaba, the viewshed of the adjacent park, the natural habitat it contains, and ensure the planned development does not affect the natural terrain and vegetation, it has been recommended that it would be both environmentally and financially beneficial if the ~2.5 acre green space was gifted by HighPointe Properties to a non-profit organization such as the Freshwater Land Trust (FLT). This conservation easement would remove the burden of water management of this space from the developer and HOA, and transfer it to the FLT. This would also allow the possibility for the greenspace to be incorporated into the FTL Master Plan as an extension of the [Patchwork Farms Greenway](#) linear park.

This greenspace arrangement is a similar approach to the following recent development donations:

- ?? acre donation of Cahaba tributary adjacent land for the [Patchwork Farms Greenway](#)
- 5 acre donation of Cahaba adjacent land during the development of Helen Ridge

The Developer can receive a favorable tax break if the donation benefits the public by permanently protecting important conservation resources and meets other federal tax code requirements as it can qualify as a tax-deductible charitable donation. The amount of the donation is the difference between the land’s value with the easement and its value without the easement. In this case, it could mean approximately 25% of the lands purchase value. The tax write off benefits would supersede the financial contribution and land donation components of this exchange between the 2 parties (Developer & FLT).

The land could be donated in two different ways:

- 1) In-Fee: meaning that the FLT outright owns the land
- 2) Conservation Easement: Where the Developer owns the rights, but FLT has covenants on the designated parcel.

The money necessary to be donated to The Freshwater Land Trust in scenario #1 could be generated by the HOA, thereby removing the financial contribution/burden of the gift by the Developer. This would allow HighPointe Properties to become branded as a “green-developer” and help leverage themselves in the developer market with a portfolio project that features an eco-friendly development practice through a partnership with The Freshwater Land Trust.

Wildlife

The neighbors are concerned that the clear-cutting of these 10 acres with minimal greenways and tree buffers will destroy the habitat of the many loved creatures that share the neighborhood. The community would like to

ensure that the final plan of the development will not strip the land, but be selective of saving all possible trees for each individual lot.

The residents are requesting the designed ~2.5 acre greenspace remains forever preserved to provide clean water, a healthy ecosystem, and natural beauty along the creek which is a tributary to the Cahaba River. The following are just a few of the observed animals that live on this property: barred owl, hawk, fox, deer, heron, and rabbit. By preserving a setback off the creek, it will maintain the view from the park, have a space for the current wildlife to co-exist, and help protect the tributary from additional runoff.

Utility Infrastructure

Stormwater Drains

The neighborhood currently drains a significant amount of water into the property of the proposed development. There are currently 3 pipes which drain into the property which should be captured and directed in a way which ensures no back-pressure or flow restriction.

Size / Address

15" – 2801 Five Oaks Lane

- This is significantly undersized and frequently clogs and pours water onto the roadway

30" – 2809 Five Oaks Lane

- This stormwater ditch is not properly engineered and recently undercut the roadway

24" & 15" – 2840 Five Oaks Lane

- This stormwater ditch carries both the 24 and 15" pipe and runoff from adjacent ~2 acres

Sewer Access

There are seven (7) adjacent properties that are uphill from the proposed development and currently do not have access to Sewer. In the development plan, the adjacent neighbors request the necessary easements and infrastructure to connect into the Jefferson County sewer infrastructure. Some considerations should also be given to providing sewer access to further uphill residents.

1. 2801 Five Oaks Lane
2. 2809 Five Oaks Lane
3. 2815 Five Oaks Lane
4. 2840 Five Oaks Lane
5. 2848 Five Oaks Lane
6. 4600 Five Oaks Circle
7. 4609 Five Oaks Circle

Appendix

- 1.0 Community petition verifying support of the key issues in this document
Paper - https://drive.google.com/file/d/1jnTUJ5yIttOqQfbejw_VFb8-ZvczS4R_/view?usp=sharing
Online - <http://change.org/myAltadena>
- 2.0 Photos of stormwater drainage pipes directed into the property
<https://drive.google.com/drive/folders/1tVwDJ78HBN9YiKsvlSNhz3ym9hi7siGs?usp=sharing>
- 3.0 Photos of large commercial vehicles exceeding the neighborhood's bridge weight ratings
<https://drive.google.com/drive/folders/1hdfmtrrWSnNravW0UWj1M55C1zp4VKi3?usp=sharing>
- 4.0 Videos of neighborhood flooding
<https://www.youtube.com/channel/UCcQDvdhYR2I-jgEQ3HKteTQ>

CITY OF VESTAVIA HILLS
SYNOPSIS AND STAFF RECOMMENDATION CONCERNING
APPLICATION BEFORE THE PLANNING AND ZONING COMMISSION

Date: JANUARY 14, 2021

- **CASE: P-0121-01**
- **REQUESTED ACTION:** Rezoning JC E-2 to Vestavia Hills R-1
- **ADDRESS/LOCATION:** 2519 Dolly Ridge Rd.
- **APPLICANT/OWNER:** Earl & Juanita Tew
- **GENERAL DISCUSSION:** This is a compatible rezoning of annexed property on Dolly Ridge Rd. from JC E-2 to VH R-1. Property was annexed overnight by Ordinance 2981 on 11/23/20.
- **STAFF REVIEW AND RECOMMENDATION:**
 1. **City Planner Review:** I have looked at all of the relevant zoning / subdivision requirements related to this proposal, including application, notification, setbacks, area of lot development, etc. Notification has been sent to property owners pursuant to Alabama law. I have reviewed this request and find it does meet the minimum requirements of the proposed zoning.

City Planner Recommendation: No recommendation
 2. **City Engineer Review:** I have reviewed the application and I have no issues with this request.
 3. **City Fire Marshal Review:** I have reviewed the application and I have no issues with this request.
 4. **Building Safety Review:** I have reviewed the application and I have no issues with this request.

CITY OF VESTAVIA HILLS

APPLICATION

PLANNING AND ZONING COMMISSION

I. INSTRUCTIONS AND INFORMATION:

- (1) The Vestavia Hills Planning and Zoning Commission meets regularly on the second Thursday of each month at 6:00 PM in Council Chambers at the Municipal Center.
- (2) All materials and information relating to a zoning/rezoning request or conditional use approval before the Planning and Zoning Commission must be submitted to the Office of the City Clerk no later than **25 working days prior to the scheduled meeting at which it shall be considered.** All information relating to Preliminary Map approvals must be submitted to the Office of the City Clerk no later than 20 days prior to the scheduled meeting at which is shall be considered. All information relating to Final Map approvals must be submitted to the Office of the City Clerk no later than 15 days prior to the scheduled meeting at which it is to be considered.
- (3) This application must be filled out in its entirety complete with zip codes.
- (4) All applicable fees shall accompany this application prior to its being considered complete. Fees include an application fee of \$100.00 along with applicable postage per property owner to be notified for Commission meeting. Fees may also include notification fees for City Council meeting and publication fees which will be billed to applicant at a later date. ***No permits will be issued until all fees have been paid.*
- (5) Appropriate plats and maps with proper legal description shall accompany this application. **Please refer to attached checklist.**

II. APPLICANT INFORMATION: (owner of property)

NAME: Earl and Juanita Tew

ADDRESS: 2519 Dolly Ridge Road, Birmingham AL 35243

MAILING ADDRESS *(if different from above)* _____

PHONE NUMBER: Home 205-637-7576 Office _____

EMAIL ADDRESS: _____

NAME OF REPRESENTING ATTORNEY/AGENT & CONTACT INFORMATION:

III. ACTION REQUESTED

Request that the above described property be zoned/rezoned

From: Jefferson County E-2

To: Vestavia Hills R-1

For the intended purpose of: annexation

(Example: From "VH R-1" to "VH O-1" for office building)

if additional information is needed, please attached full description of request

IV. PROPERTY DESCRIPTION: (address, legal, etc.)

2519 Dolly Ridge Road; Lot 1, Block 2, Dolly Ridge Est., 2nd Add 47/66

Property size: 230 feet X 119 feet. Acres: .60

V. INFORMATION ATTACHED:



Attached Checklist complete with all required information.



Application fees submitted.

VI. I do hereby declare the above statements are true and that I am the owner and myself or my duly appointed representative will be at the scheduled hearing.

Earl Tew

Owner Signature/Date

11-10-20

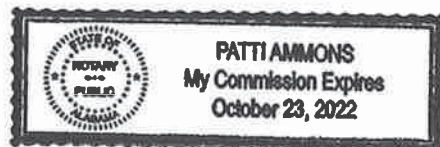
Representing Agent (if any)/date

Given under my hand and seal
this 10th day of November, 2020.

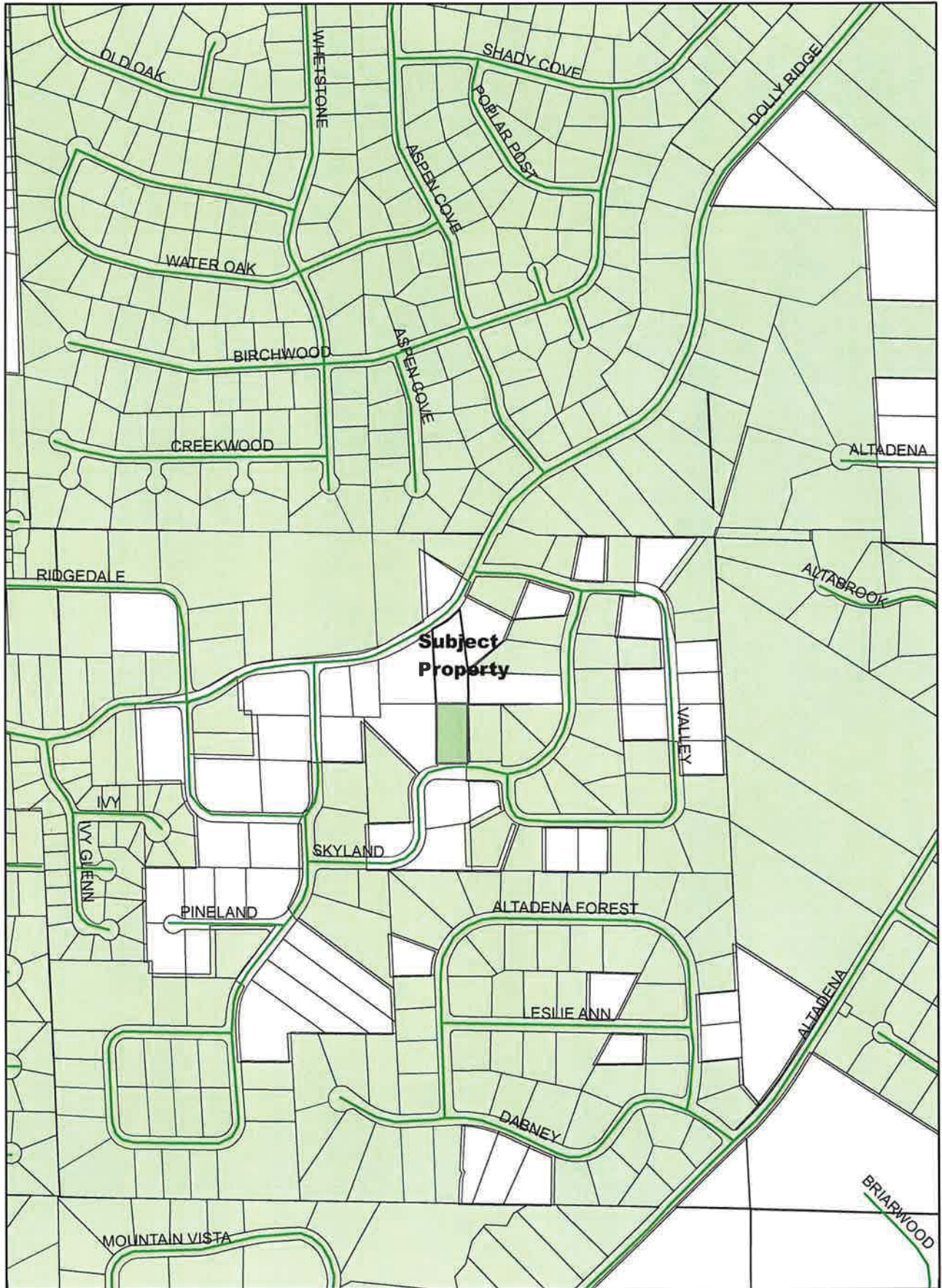
Patti Ammons

Notary Public

My commission expires Oct. 23
day of _____, 2022.

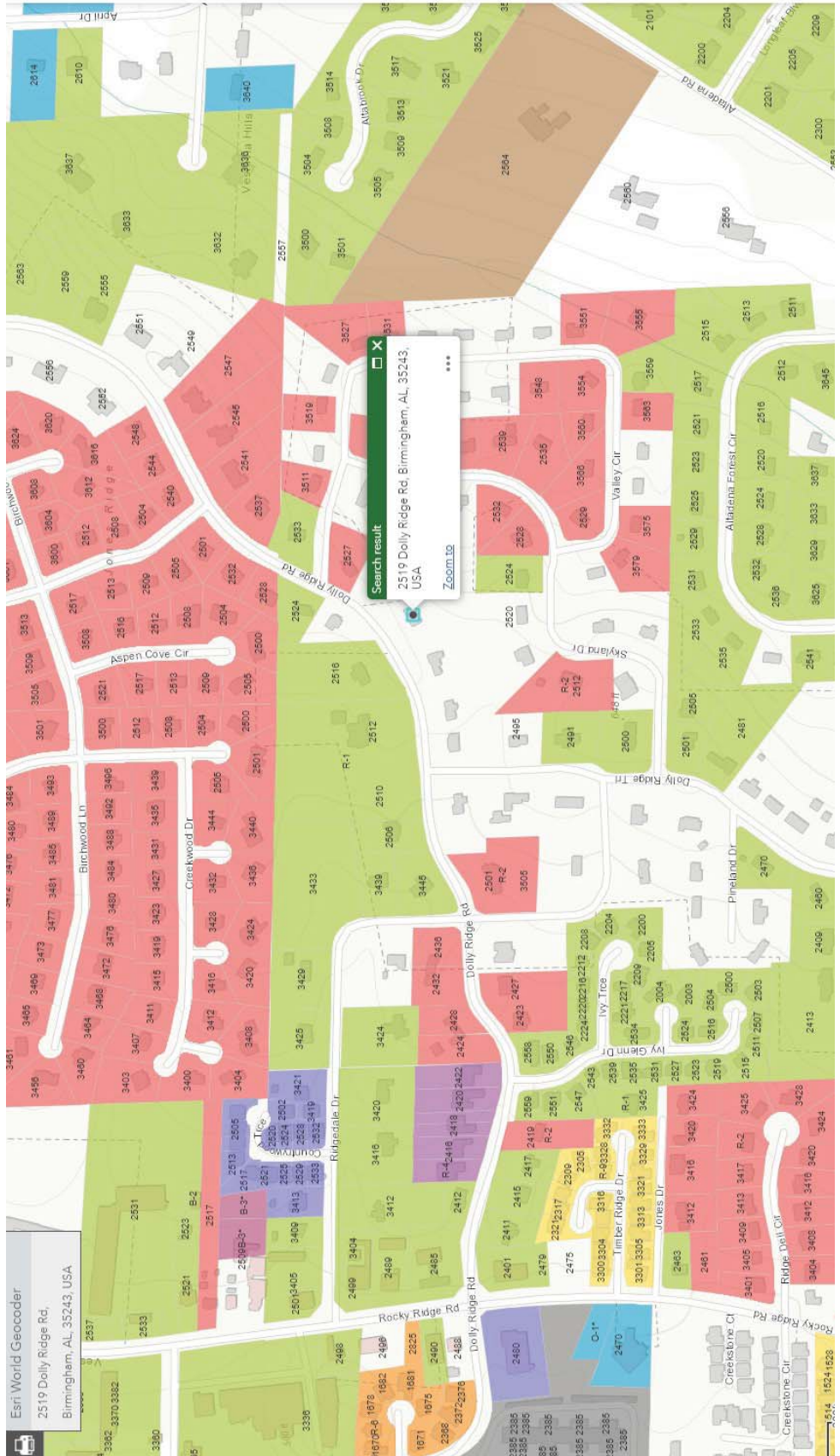


2519 Dolly Ridge Road



Address_Points

- Zoning
- R-2
 - PUD-PR-1
 - R-1
 - R-4
 - R-6
 - R-9
 - R-3
 - R-8
 - R-5
 - R-9*
 - RC-1
 - B-3
 - A
 - E-2
 - B-2
 - Inst-1
 - R-1*
 - O-1
 - PUD-P8
 - R-8*
 - R-6*
 - B-1
 - B-3*
 - Inst-1*
 - B-2*



Esri World Geocoder
2519 Dolly Ridge Rd,
Birmingham, AL, 35243, USA

CITY OF VESTAVIA HILLS
SYNOPSIS AND STAFF RECOMMENDATION CONCERNING
APPLICATION BEFORE THE PLANNING AND ZONING COMMISSION

Date: **JANUARY 14, 2021**

- **CASE:** P-0121-02
- **REQUESTED ACTION:** Rezoning JC R-1 to Vestavia Hills R-2
- **ADDRESS/LOCATION:** 2537 Tyler Rd.
- **APPLICANT/OWNER:** Glenda Mortenson
- **GENERAL DISCUSSION:** This is a compatible rezoning of annexed property on Tyler Rd. from JC R-1 to VH R-2. Property was annexed overnight by Ordinance 2980 on 11/23/20.
- **STAFF REVIEW AND RECOMMENDATION:**
 1. **City Planner Review:** I have looked at all of the relevant zoning / subdivision requirements related to this proposal, including application, notification, setbacks, area of lot development, etc. Notification has been sent to property owners pursuant to Alabama law. I have reviewed this request and find it does meet the minimum requirements of the proposed zoning.

City Planner Recommendation: No recommendation
 2. **City Engineer Review:** I have reviewed the application and I have no issues with this request.
 3. **City Fire Marshal Review:** I have reviewed the application and I have no issues with this request.
 4. **Building Safety Review:** I have reviewed the application and I have no issues with this request.

2020 DEC -3 A 1:59

CITY OF VESTAVIA HILLS

APPLICATION

PLANNING AND ZONING COMMISSION

I. INSTRUCTIONS AND INFORMATION:

- (1) The Vestavia Hills Planning and Zoning Commission meets regularly on the second Thursday of each month at 6:00 PM in Council Chambers at the Municipal Center.
- (2) All materials and information relating to a zoning/rezoning request or conditional use approval before the Planning and Zoning Commission must be submitted to the Office of the City Clerk no later than **25 working days prior to the scheduled meeting at which it shall be considered.** All information relating to Preliminary Map approvals must be submitted to the Office of the City Clerk no later than 20 days prior to the scheduled meeting at which is shall be considered. All information relating to Final Map approvals must be submitted to the Office of the City Clerk no later than 15 days prior to the scheduled meeting at which it is to be considered.
- (3) This application must be filled out in its entirety complete with zip codes.
- (4) All applicable fees shall accompany this application prior to its being considered complete. Fees include an application fee of \$100.00 along with applicable postage per property owner to be notified for Commission meeting. Fees may also include notification fees for City Council meeting and publication fees which will be billed to applicant at a later date. ***No permits will be issued until all fees have been paid.*
- (5) Appropriate plats and maps with proper legal description shall accompany this application. **Please refer to attached checklist.**

II. APPLICANT INFORMATION: (owner of property)

NAME: Glenda Mortenson

ADDRESS 1335 Caliston Way
Pelham AL 35214

MAILING ADDRESS (if different from above) _____

PHONE NUMBER: Home (205) 913-4947 Office Same

EMAIL ADDRESS: _____

NAME OF REPRESENTING ATTORNEY/AGENT & CONTACT INFORMATION:

Dick

III. ACTION REQUESTED

Request that the above described property be zoned/rezoned

From JC R-1

To: VH R-2

For the intended purpose of: Annexation

(Example: From "VH R-1" to "VH O-1" for office building)

if additional information is needed, please attached full description of request

IV. PROPERTY DESCRIPTION: (address, legal, etc.)

2537 Tyler Road

Lot 3-A Mclemores Resurvey 139/36

Property size: 412 feet X 110 feet. Acres: 1 acre

V. INFORMATION ATTACHED:

Attached Checklist complete with all required information.

Application fees submitted.

VI. I do hereby declare the above statements are true and that I am the owner and myself or my duly appointed representative will be at the scheduled hearing.

Glenda Mortenson
Owner Signature/Date

Representing Agent (if any)/date

Given under my hand and seal
this 16th day of Sept, 2020

[Signature]
Notary Public

My commission expires 5th
day of Sept, 2020.

2537 Tyler Road

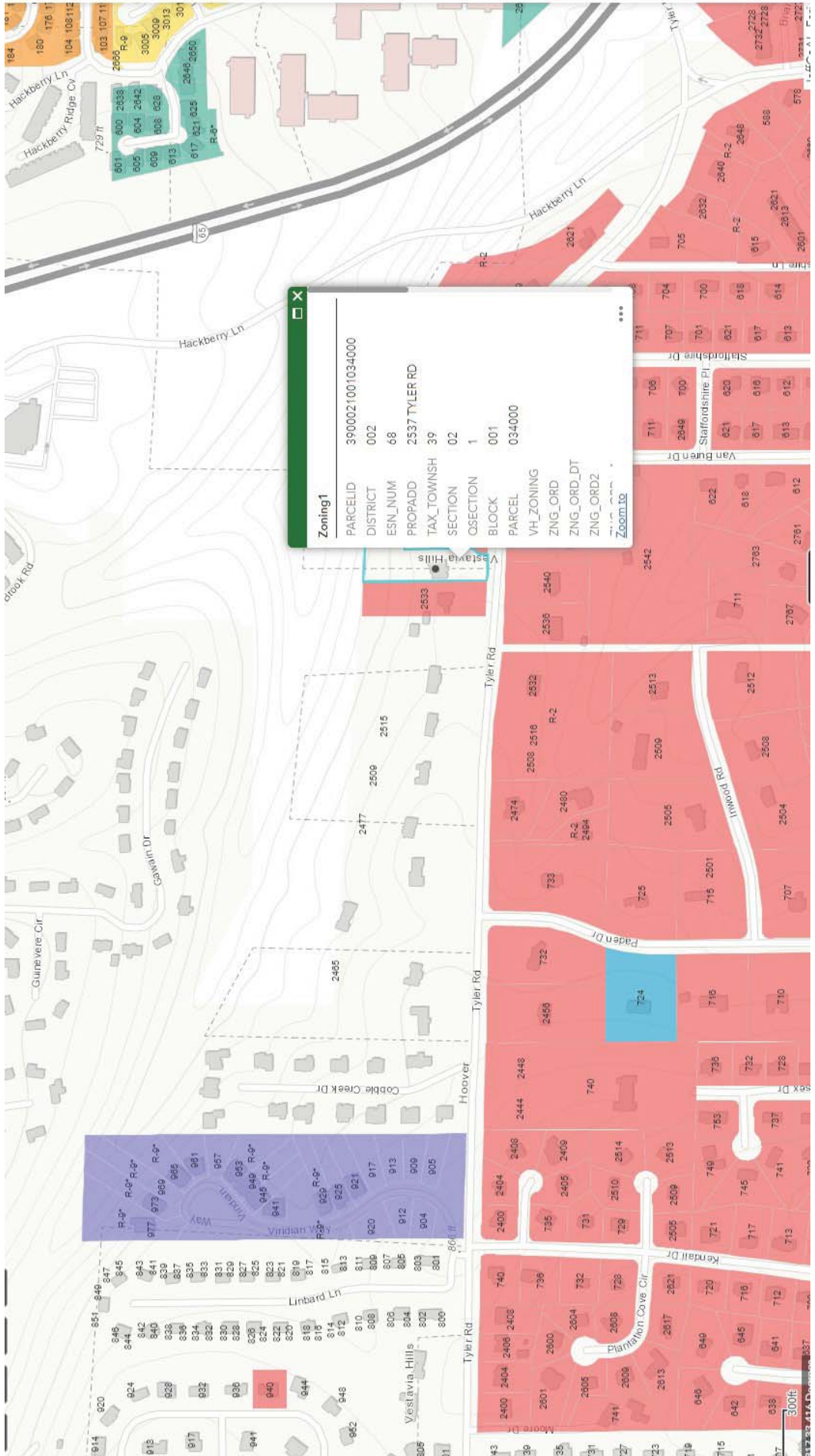


Legend

 Vestavia_Hills_City_Limits

Zoning

- R-2
- PUD-PR-1
- R-1
- R-4
- R-6
- R-9
- R-3
- R-8
- R-5
- R-9*
- RC-1
- B-3
- A
- E-2
- B-2
- Inst-1
- R-1*
- O-1
- PUD-PB
- R-8*
- R-6*
- B-1
- B-3*
- Inst-1*
- B-2*
- C-1*



CITY OF VESTAVIA HILLS
SYNOPSIS AND STAFF RECOMMENDATION CONCERNING
APPLICATION BEFORE THE PLANNING AND ZONING COMMISSION

Date: JANUARY 14, 2021

- **CASE: P-0121-04**
- **REQUESTED ACTION:** Rezoning JC E-1 to Vestavia Hills E-2
- **ADDRESS/LOCATION:** 3643 Altadena Dr.
- **APPLICANT/OWNER:** Mitchell & Amanda Marcum
- **GENERAL DISCUSSION:** This is a compatible rezoning of annexed property on Altadena Dr. from JC E-1 to VH E-2. Property was annexed overnight by Ordinance 2982 on 11/23/20.
- **STAFF REVIEW AND RECOMMENDATION:**
 1. **City Planner Review:** I have looked at all of the relevant zoning / subdivision requirements related to this proposal, including application, notification, setbacks, area of lot development, etc. Notification has been sent to property owners pursuant to Alabama law. I have reviewed this request and find it does meet the minimum requirements of the proposed zoning.

City Planner Recommendation: No recommendation
 2. **City Engineer Review:** I have reviewed the application and I have no issues with this request.
 3. **City Fire Marshal Review:** I have reviewed the application and I have no issues with this request.
 4. **Building Safety Review:** I have reviewed the application and I have no issues with this request.

CITY OF VESTAVIA HILLS

APPLICATION

2020 DEC -9 A 7:56

PLANNING AND ZONING COMMISSION

I. INSTRUCTIONS AND INFORMATION:

- (1) The Vestavia Hills Planning and Zoning Commission meets regularly on the second Thursday of each month at 6:00 PM in Council Chambers at the Municipal Center.
- (2) All materials and information relating to a zoning/rezoning request or conditional use approval before the Planning and Zoning Commission must be submitted to the Office of the City Clerk no later than **25 working days prior to the scheduled meeting at which it shall be considered.** All information relating to Preliminary Map approvals must be submitted to the Office of the City Clerk no later than 20 days prior to the scheduled meeting at which is shall be considered. All information relating to Final Map approvals must be submitted to the Office of the City Clerk no later than 15 days prior to the scheduled meeting at which it is to be considered.
- (3) This application must be filled out in its entirety complete with zip codes.
- (4) All applicable fees shall accompany this application prior to its being considered complete. Fees include an application fee of \$100.00 along with applicable postage per property owner to be notified for Commission meeting. Fees may also include notification fees for City Council meeting and publication fees which will be billed to applicant at a later date. ***No permits will be issued until all fees have been paid.*
- (5) Appropriate plats and maps with proper legal description shall accompany this application. **Please refer to attached checklist.**

II. APPLICANT INFORMATION: (owner of property)

NAME: MITCHELL AND AMANDA MARCUM

ADDRESS: 3643 ALTADENA DR

BIRMINGHAM, AL 35243

MAILING ADDRESS (if different from above) _____

PHONE NUMBER: Home 601-259-5787 Office Same

EMAIL ADDRESS: mrmarcum12@gmail.com

NAME OF REPRESENTING ATTORNEY/AGENT & CONTACT INFORMATION:

P0121-04//2800332001012.000
3643 Altadena Drive
 Rezoned to VH E-2
 Mitchell & Amanda Marcum
 JC E1

III. ACTION REQUESTED

Request that the above described property be zoned/rezoned

From: JC E-1

To: VH E-2

For the intended purpose of: Annexation into Vestaria Hills

(Example: From "VH R-1" to "VH O-1" for office building)

if additional information is needed, please attached full description of request

IV. PROPERTY DESCRIPTION: (address, legal, etc.)

3643 ALTADENA DR

LOT 17, ALTADENA ACRES

Property size: ~300 feet X ~150 feet. Acres: 1.03

V. INFORMATION ATTACHED:

Attached Checklist complete with all required information.

Application fees submitted.

VI. I do hereby declare the above statements are true and that I am the owner and myself or my duly appointed representative will be at the scheduled hearing.

Mitchell Marcum / 12/2/20
Owner Signature/Date

Representing Agent (if any)/date

Given under my hand and seal
this 2nd day of December, 2020.

Patricia Pierce
Notary Public

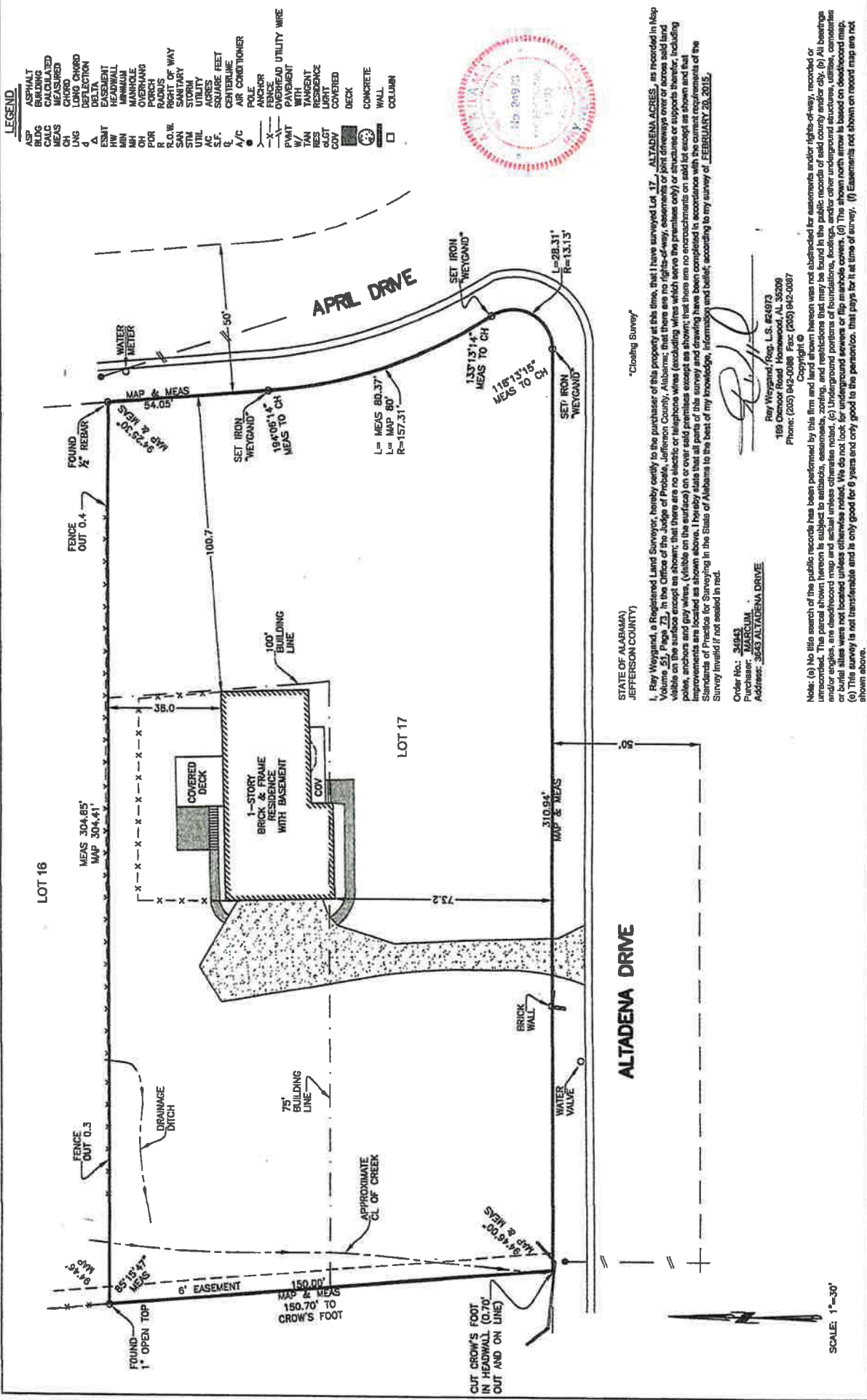
My commission expires 7/22/22
day of July, 2022.

3643 Altadena Drive



Legend

 Vestavia_Hills_City_Limits



LEGEND

- ASP ASPHALT
- BLDG BUILDING
- CALC CALCULATED
- MEAS MEASURED
- CONG CONCRETE
- LNG LONG CHORD
- DEF DEFLECTION
- DEL DELTA
- ESMT EASEMENT
- MANH MANHOLE
- MIN MINOR
- MANH MANHOLE
- OH OVERHANG
- POR PORCH
- R.O.W. RIGHT OF WAY
- SAN SANITARY
- STM STORM
- UTL UTILITY
- CF CURB FEET
- Q CENTERLINE
- A/C AIR CONDITIONER
- POLE POLE
- ANCHOR ANCHOR
- FENCE FENCE
- OVERHEAD UTILITY WIRE OVERHEAD UTILITY WIRE
- PERMIT PERMIT
- W/T WITH TANGENT
- TAN TANGENT
- RES RESIDENCE
- RES RESIDENCE
- DECK COVERED DECK
- CONCRETE CONCRETE
- WALL WALL
- COLUMN COLUMN



STATE OF ALABAMA
JEFFERSON COUNTY

I, Ray Weigand, a Registered Land Surveyor, hereby certify that this map, that I have surveyed Lot 17, ALTADENA ACRES, as recorded in Map Volume 57, Page 23, in the Office of the Judge of Probate, Jefferson County, Alabama; that there are no rights-of-way, easements or point driveways over or across said land visible on the surface except as shown; that there are no electric or telephone wires (excluding wires which serve the premises only) or structures or supports therefor, including poles, anchors and guy wires, (wires on the surface) on or over said premises except as shown; that there are no encroachments on said land except as shown and that the same are shown as such on this map and drawing in accordance with the Standards of Practice for Surveying in the State of Alabama to the best of my knowledge, information and belief, according to my survey of FEBRUARY 20, 2015.

Survey Invalid if not sealed in red.

Order No.: 34943
Purchaser: MARCOLM
Address: 3663 ALTADENA DRIVE

Ray Weigand, Reg. L.S. #24873
189 Osmore Road, Horsewood, AL 35208
Phone: (205) 942-0088 Fax: (205) 942-0887

Note: (a) No title search of the public records has been performed by this firm and land shown herein was not subdivided for easements and/or rights-of-way, recorded or unrecorded. The parcel shown herein is subject to easements, easements, zoning, and restrictions that may be found in the public records of said county and/or city. (b) All bearings and/or angles, are doublechecked and actual unless otherwise noted. (c) Underground portions of foundations, footings, and/or other underground structures, utilities, canals, or buried pipes were not located unless otherwise noted. We do not look for underground sewers or flip manhole covers. (d) The shown north arrow is based on deadboard map. (e) This survey is not transferable and is only good for 8 years end only good to the permanent, that pays for it at time of survey. (f) Easements not shown on record map are not shown above.

SCALE: 1"=30'

North Arrow

- Zoning
- R-2
 - PUD-PR-1
 - R-1
 - R-4
 - R-6
 - R-9
 - R-3
 - R-8
 - R-5
 - R-9*
 - RC-1
 - B-3
 - A
 - E-2
 - B-2
 - Inst-1
 - R-1*
 - O-1
 - PUD-PB
 - R-8*
 - R-6*
 - B-1
 - B-3*
 - Inst-1*
 - B-7*



Zoning1

PARCELID	2800332001012000
DISTRICT	002
ESN_NUM	504
PROPADD	3643 ALTADENA DR
TAX_TOWNSH	28
SECTION	33
QSECTION	2
BLOCK	001
PARCEL	012000
VH_ZONING	
ZNG_ORD	
ZNG_ORD_DT	
ZNG_ORD2	
Zoom to	