

**Declaration of Protective Covenants,  
Conditions and Restrictions for Deer Creek POD R Plat No. 2**

Vaughn Road, L.L.C., an Alabama limited liability company (herein referred to as "Developer"), as owner of the property shown on this plat, which property constitutes a portion of a development known as Deer Creek in Montgomery County, Alabama, hereby declares that the property shown hereon and ownership of the lots platted hereby are expressly made subject to all of the terms and provisions of the Articles of Incorporation ("Articles") of Deer Creek Homeowners' Association, Incorporated, and the accompanying Bylaws of the Association ("Bylaws"), which are recorded in the Office of the Judge of Probate of Montgomery County, Alabama, in Corporate Book 197, at Page 868, as the Articles and Bylaws may be amended or modified from time to time as permitted therein. Capitalized terms not otherwise defined in this Declaration shall have the meaning ascribed to them in the Bylaws. This Declaration of Protective Covenants, Conditions and Restrictions is a Declaration, as defined in the Bylaws, and the lots in this plat are contained within a POD designated as POD R. Each Person owning a lot shown on this plat shall be a Member of the Association and subject to all of the terms and provisions of the Articles, the Bylaws and other aspects of the Association. References in this Declaration to the word "owner" and/or "homeowner" shall have the same meaning as a Member as defined in the Bylaws.

Developer does hereby create, establish and impose the following covenants and restrictions upon the property embraced within this plat:

1. **USE OF PROPERTY:** Except as may be otherwise approved in writing by Declarant, no lot shall be used except for a single-family residential purpose.
2. **TYPE DWELLING:** No buildings, or additions thereto, shall be erected, altered, placed or permitted to remain on any lot herein other than one detached single-family dwelling not to exceed two stories in height, except that a third story shall be permitted if it is designed in such fashion as to fit within the normal roof-line of a two story structure in the area that would normally be considered attic area. The architecture of any dwelling to be erected on any lot shall be generally in substantial harmony and conformity with the general prevailing type of architecture in the vicinity, with all construction and architectural plans being subject to prior review and approval of the Architectural Review Committee, as established by the Board pursuant to the Bylaws of the Association (hereinafter referred to as "ARC").
3. **MINIMUM SQUARE FOOTAGE RESTRICTION:** Each residence constructed on a lot within this plat shall have a minimum square footage of air conditioned and heated living area of at least 1,100 square feet, exclusive of open porches, attached garages, carports or other non-living areas, and, in the case of any residence to be constructed having more than one story, the same must have a minimum ground floor square footage of air conditioned and heated living area of at least 700 square feet, exclusive of open porches, attached garages or other non-living areas. All lots within this plat must have a minimum of forty-five (45) feet of frontage between side lot lines at the building line shown herein, unless a lesser frontage dimension is reflected on this plat, in which case the minimum frontage at the building line shall be as reflected on this plat.

4. ARC APPROVAL: No construction or improvements (which terms shall include, but not be limited to, the actions of staking, clearing, excavating, grading, site work, landscaping, planting, and removal of plants, trees and shrubs) shall take place or be erected, altered, or placed on any lot until and unless plans and specifications, including a site plan showing the location of the structure and any other improvements on or to the lot, have been approved in all respects by the ARC. The ARC's approval is required with respect to any and all aspects of any and all construction and improvements on each lot within the plat herein set out. Each request for approval of construction on or major improvement to a lot shall be accompanied by a processing fee to be established from time to time by the ARC, which fee shall in no event exceed four (4) times the maximum monthly Base Assessment for the fiscal year in which the approval is required, along with three (3) sets of plans for the proposed construction, renovation, improvement or other action requiring ARC approval. The ARC shall have thirty (30) days from and after the day it receives the last of the processing fee and the sets of plans to review and respond to the lot owner's request with respect to the prospective construction or major improvement, provided that, if the ARC does not respond within such thirty (30) day time period, the request shall be deemed denied. To the extent permitted or authorized by the Bylaws or the Board, the ARC has established or will establish its own requirements, procedures, policies, and time frames, a copy of which requirements shall be available, on request, to lot owners, their architects, or builders. All approvals by the ARC must be in writing, dated, signed by an authorized representative of the ARC, and where plans and specifications are required said approval shall be reflected on the plans and specifications after approval is obtained from the ARC. The ARC may, in its unrestricted discretion, reduce, increase or waive any approval fee in the event the approval sought is not for new home construction or a major renovation or addition, and the ARC may, to the extent permitted or authorized by the Bylaws or the Board, periodically modify or amend its requirements, but in no event shall its requirements be less restrictive than these covenants otherwise require. To the extent permitted or authorized by the Bylaws or the Board, the ARC may set site standards, building design and materials standards, building construction standards, and other standards that it deems appropriate (all such standards so adopted from time to time by the ARC being sometimes referred to as "ARC Guidelines"). Approval of any plans or the setting of any requirement for approval does not constitute, and shall not be construed as, any representation or guaranty of safety or architectural integrity by the ARC or the Association, which instead shall be the sole responsibility of each lot owner.
  
5. BUILDING SETBACK REQUIREMENTS: No building shall be located on any lot nearer to the front lot line or nearer to the street line than the building line for such lot shown on this plat. No principal building shall be located nearer than ten (10) feet to any other principal building. In the event that the initial, principal building constructed on a lot is located within ten (10) feet of a side lot line, that lot shall be entitled to an easement on the adjacent lot to which such building is so located within ten (10) feet of the side lot line of the adjacent lot, which easement shall consist of a width equal to ten (10) feet reduced by the number of feet that such initial, principal building is located from such side lot line, for the use by such lot owners, their agents, employees and invitees for the purpose of maintenance and decoration of said improvements and for a temporary construction easement during any construction period, at reasonable times during daylight hours, and for the drainage of water from the lot and the roof of the principal building. Except as specified herein, the abutting owner shall not have rights of ingress and egress and, subject to the other terms of this Declaration, lot owners may fence, landscape and improve such area so long as drainage of water from said premises is not unreasonably impeded. For the purposes of this covenant, eaves, steps, stoops or

entrance platforms, and ornamental planting boxes shall not be considered as a part of a building, provided, however, that this shall not be construed to permit any portion of a building on any lot to encroach on, under or above any other lot.

6. **RESUBDIVISION OR PARTITION OF LOTS:** The lot lines shown on this plat may be further modified by the owners thereof without the approval or joinder of the owners of the other lots in this plat, provided no additional building lots may be created thereby, and provided that no lot shall be reduced so as to reduce its size between side lot lines at the building line shown on this plat to less than forty-five (45) feet. In the event of any resubdivision of any lots shown on this map, each tract so constituted shall be considered as and referred to as one lot for the purpose of these covenants and these covenants shall apply the same as if each tract had been platted as one lot on this plat. Should the owner of two adjacent lots desire to build and maintain a single dwelling on the combined lots, then the side lot line restrictions shall apply only to the extreme side lines of the combined lots. Notwithstanding the foregoing, no lot lines or building lines may be further modified without the prior written approval by the ARC.
7. **EASEMENTS:** Easements for installation and maintenance of utilities and private drainage and access are reserved as shown on this plat. The easement area shall be maintained continuously by the owners of the respective lots, except for those improvements for which a public authority or utility company is responsible.
8. **OVERHEAD FACILITIES:** The owners of the lots within this plat will not erect or grant to any person, firm, or corporation, the right, license, or privilege to erect or use, or permit the use of, overhead wires, poles, or overhead facilities of any type or kind for electrical, electronic communication, or telephone service on said real estate (except such poles and overhead facilities as may be required at those places where distribution facilities enter and leave this plat). Nothing herein shall be construed to prohibit overhead street lighting fixtures, or ornamental yard lighting where such is serviced by underground wires or cables.
9. **GARAGES AND OUTBUILDINGS:** No separate garages or outbuildings or auxiliary structures of any kind or nature shall be erected or allowed to occupy any portion of any lot without the prior written approval by the ARC. No metal storage buildings shall be allowed.
10. **NUISANCE:** No noxious or offensive trade or activity shall be carried on or upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighbors or the neighborhood.
11. **TEMPORARY STRUCTURE:** No structure of a temporary character (e.g., trailer, tent, mobile home, motor home, basement, shack, garage, barn or other out-building or auxiliary structure) shall be used at any time as a residence, either temporarily or permanently.
12. **SIGNS:** No sign of any kind or nature, or advertising device of any kind or nature, shall be placed upon any part of any lot owned by any person or entity except as permitted herein or in accordance with applicable ARC Guidelines, if any, or other requirements of the ARC relating to signs or other advertising devices. Signs and other advertising devices, when in compliance with criteria established herein and by the ARC, may be erected and maintained upon an owner's lot. Notwithstanding the foregoing, the Declarant specifically reserves the right for itself, its successors and assigns and the

Association, to place and maintain signs in connection with constructing, marketing, and/or sales and rentals of the dwelling units, and identifying or informational signs, anywhere on the property. The Developer, the Association and the ARC shall have the right to enter upon any part of the property and remove or correct any such violation, provided, however, that prior notice is given of such action. Notice may be given verbally or written.

13. MINING: No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon, in or under any lot, nor shall oil wells, tunnels, tanks, mineral excavations or shafts be permitted on, upon, or under any lot.
14. ANIMALS: No animals, livestock, or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats, and other normal and common household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose, and provided that they are kept in reasonable numbers and under reasonable conditions so as not to create a nuisance and not to otherwise unreasonably disturb the neighbors or the neighborhood.
15. PLANTING AND OBSTRUCTIONS: The Association and the ARC shall have the right, but not the obligation, to enter upon any part of the property to trim or prune, at the owner's expense, any hedge or other plantings which, in the opinion of the Association or the ARC, by reason of its location upon the property or the height to which it is permitted to grow, is unreasonably detrimental to the adjoining property or obscures the view of the street, traffic or surrounding amenities or is unattractive in appearance, provided, however, that the owner shall be given fifteen (15) days prior written notice of such action.
16. OUTSIDE USES: No rocks, rock gardens, bird baths, ponds or pools, lawn sculptures, artificial plantings, childrens' play equipment, basketball goals, lawn furnishings, or the like, shall be permitted without the written approval of the ARC. No vegetable, herb or similar gardens shall be planted or maintained so as to be visible from the street or readily visible by adjacent property owners.
17. GARAGES AND CARPORTS: The direction of the opening of any garage or carport must be approved in advance in writing by the ARC. Garage doors must remain closed except when vehicles are entering and/or exiting the garage. If the principal building does not have a garage, off street parking spaces must be made available. If the principal building has a 1 (one) car garage 1 (one) additional off street parking space must be available.
18. VEHICLE PARKING: Vehicle parking in driveways and/or on the street in front of houses shall be limited to temporary parking of guest or resident vehicles in current use and currently licensed. Other vehicles must be parked in garages. If garage does not exist vehicles must be parked in driveway. Vehicle parking in non-paved areas shall not be permitted in any event.
19. USE OF APPROVED STRUCTURE: No structure previously approved by the ARC shall be used for any purpose other than that for which it was originally designed and approved.
20. RECREATIONAL VEHICLES: No boat, boat trailer, house trailer, horse trailer, trailer, camper, motor home or any similar items shall be located on or at any lot for a period of

time in excess of twenty-four (24) hours, unless the same are stored in a carport or garage, or parked on a paved surface beyond the rear line of the home constructed on subject lot and screened so that such item cannot be seen from any adjoining street or the adjacent and surrounding lots, and any such parking facility or area must receive the prior written approval of the ARC.

21. SWIMMING POOL EQUIPMENT: Swimming pool equipment and housing must be underground or placed in walled-in or landscaped areas so as not to be visible from adjoining property.
22. COMMERCIAL TRUCKS: No commercial truck, vehicle or equipment shall be permitted to be parked or to be stored at any place on subject property. This prohibition on parking and storage shall not apply to temporary parking of trucks and/or commercial vehicles used for pick-up and delivery.
23. ADDITIONAL REMEDIES FOR VEHICLE AND/OR RECREATIONAL EQUIPMENT VIOLATIONS: Any such vehicle or recreational equipment parked in violation of the restrictions contained herein or in violation of the rules and regulations now or hereafter adopted by the Association or the ARC may be towed away at the direction of the Association or the ARC, at the sole expense of the owner of such vehicle or recreational equipment, if the violation of said restrictions remains for a period of more than twenty-four (24) hours and if the owner of such vehicle or recreational equipment receives notice of the towing of such vehicle before the towing occurs. Neither the Association nor the ARC shall be liable to the owner of such vehicle or recreational equipment, nor to the respective lot owners, for trespass, conversion or otherwise, nor shall the Association or the ARC be guilty of any criminal or quasicriminal act by reason of such towing, and neither the removal nor the failure to remove any such vehicle or recreational equipment, nor the failure of the owner to receive any notice of said violation, shall be grounds for relief of any type. The foregoing remedy is in addition to any other remedy which may exist whether at law or in equity.
24. VEHICLE MAINTENANCE AND REPAIR: No vehicle maintenance or repair shall be performed on any vehicles upon any portions of the subject property, unless performed in a garage, except in an emergency situation. Notwithstanding the foregoing exception for emergencies, all repairs to disabled vehicles within the property must be completed within twenty-four hours from its immobilization or the vehicle must be removed. The Association shall be allowed to maintain and store its maintenance vehicles, if applicable, on specific areas of the property as necessary for the operation and maintenance of the Association Property and Areas of Association Responsibility.
25. ACCUMULATION OF REFUSE: No lumber, metals, bulk materials, refuse or trash shall be kept, stored or allowed to accumulate on any part of the property, except building materials used during the course of original construction of any approved structure, or any approved renovation, repair or reconstruction. If trash or other refuse is to be disposed of by being picked up and carried away on a regular and recurring basis, containers must only be placed in the open on any day that a normal pick up is to be made, at such place on the property to provide access to persons making such pick up. At all other times such containers shall be stored in such manner so that they cannot be seen from adjacent and surrounding property. The ARC may, to the extent permitted or authorized by the Bylaws or the Board, adopt and promulgate reasonable rules and regulations relating to the size, shape, color and type of containers permitted and the manner of storage of the same on the property. Furthermore, the Association, at its sole

discretion, may require lot owners or builders, at any time, to provide dumpsters on the property during construction.

26. BUSINESS ACTIVITY: No profession or home industry or other commercial venture shall be conducted in or on any part of the property or in any improvements thereon. The Board of Directors of the Association (hereinafter referred to as the "Board"), in its discretion, upon consideration of the circumstances in each case, and particularly upon consideration of the effect upon surrounding property and property owners, may permit the conduct of a profession or home industry within a residence located on the property. Such commercial operation may be permitted only after the Board has determined that it is compatible with a high quality residential neighborhood and does not unreasonably interfere with the normal residential use or adversely impact the value of adjoining property or property in the area. This section may not be interpreted to authorize or permit any commercial activity which is in violation of local statutes or zoning regulations. Any such approval granted by the Board may be withdrawn if the Board determines, in its sole discretion, that such authorized or permitted activity is unreasonably interfering with the rights of the subdivision in general or any individual lot owner within said subdivision. In no event shall any part of the premises or any structure thereon be used as a school, child care center, kindergarten, learning center, musical instrument or voice training center, or other public building, including non-profit or charitable institutional use.
27. AIR CONDITIONING UNITS AND SOLAR COLLECTORS: No wall or window air conditioning units nor solar collectors shall be permitted except with the prior written approval of the ARC.
28. PIPES AND CLOTHESLINES: No water pipes, gas pipes, sewer pipes, drainage pipes or clotheslines may be installed or maintained on the property so as to be visible from adjoining property or public view, except hoses and movable pipes used for temporary irrigation purposes.
29. REAL ESTATE OFFICE OR SUBDIVISION OFFICE: The Declarant may, in Declarant's sole discretion, use or permit the use of any lot within Deer Creek property for the construction of and/or use of a building constructed thereon as a subdivision office, real estate office and/or model home, and as such the same shall not be subject to the terms, provisions and requirements of these covenants until such time as all other lots within Deer Creek property have been sold and upon that occurrence said lot and building constructed thereon shall, as soon as reasonably possible and to the extent reasonably and economically practical, be brought into compliance with these covenants.
30. MACHINERY: No machinery shall be placed on or operated upon any portion of the subject property except such machinery as is normal and usual in the maintenance of a private residence, or except such as is necessary during the original construction of a residence or a major renovation or improvement thereto.
31. MAILBOXES: The design of all mailboxes and mailbox posts must be approved by the ARC and said ARC may establish a common design and a required location for all mailboxes and mailbox posts, so long as these specifications comply with the requirements of the United States Postal Service. If required by Developer or the ARC, the lot owner shall purchase a standard mailbox and mailbox post from the Developer or the Association at a standard common charge to be applied uniformly, and shall install

and maintain said mailbox in appropriate condition and repair, with original color scheme being maintained thereon, as required by the ARC. If mailboxes are required to be purchased by the ARC or Developer, any damage or destruction to mailboxes which cannot be adequately repaired will result in the lot owner being required to purchase a replacement mailbox from the Association or Developer.

32. FENCING: No fence or walls of any kind shall be erected without the approval of the ARC. No fence or wall shall be erected or placed on any lot nearer to any street than the minimum setback lines of said lot unless approved by the ARC.
33. AUTHORIZED USE AND EXCEPTIONS: Notwithstanding other provisions herein, each residence located on a lot shall be used only as a single-family residence and shall be subject to all other requirements hereunder, but the ARC may authorize any lot owner, with respect to his or her residence, to temporarily use the same for more than one family, to temporarily maintain a sign other than as expressly permitted herein, to locate other temporary structures on the property, and may make other exceptions to these covenants. In all such instances, approvals of, and exceptions granted by, the ARC must be in advance and in writing. With respect to such approvals or exceptions, each case and each request shall be reviewed on its own merits, and the ARC shall have unrestricted discretion and neither the granting or refusing of similar requests for other lot owners nor the approval and consent or disapproval of adjoining lot owners shall in any way be a determinative or limiting influence on the decision of the ARC.
34. PROHIBITED USES: No person shall, without the written approval of the Association or the ARC, as the case may be, do any of the following on any part of the subject property or Association Property: (1) permit the running of animals except when on a leash; (2) fell any trees or injure or damage any landscaping within the Association Property; (3) interfere with any drainage, utility or access easement; (4) build or assemble any structures, recreational or common facilities, other than those approved by the ARC; (5) discharge any liquid or other materials other than natural water drainage into any lake, pond or water course; (6) alter or obstruct any lakes, ponds or water courses; (7) interfere with any water control structures or apparatus; (8) use motor boats on any lake, pond or stream; (9) boat or fish; (10) light any fires except in designated areas or (11) swim in any body of water other than a swimming pool. No Person shall violate any rules and regulations that may be established by the Association governing the use of the Association Property or the rules or requirements that may be established by the ARC.
35. STORM DRAINAGE OVERFLOW EASEMENT: All lots adjacent to a body of water shall be subject to a drainage overflow easement. No permanent structure shall be placed over any part of the drainage overflow easement without prior written approval from the ARC. The owner of each lot abutting the storm drainage overflow easements, if any are shown on this plat, will hold the City of Montgomery, Alabama, the Declarant, the Association, and the ARC, their successors and assigns, harmless for any damages or injury to physical property or life, human or animal caused or exacerbated by storm water runoff. The City of Montgomery, Alabama, will not be responsible for installation and/or maintenance of the drainage overflow easement or in any private storm drainage easement.
36. SECURITY: The Association may own and provide for the maintenance of an entrance gatehouse and, if manned, the salary for the same. The Association may also install and maintain electronic gates. This is not intended to obligate the Developer or the

Association to provide any form of security or surveillance to the owners, their properties or the Association's properties. Nothing herein shall constitute or be deemed to constitute a representation, warranty, assurance or promise that the Association, the ARC or Developer will either now or in the future provide any security force or device to provide protection for the owners of the lots platted by this plat or any other persons or property located within this plat. In no event shall the Association, the ARC or the Developer be obligated to or responsible for providing any security service or services, security devices, to provide protection for owners or any other persons or property located within this plat. The Association, the ARC and the Developer shall not be responsible or liable for any damages or losses caused by any failure to provide any security service or services within Deer Creek. Furthermore, the provision of a guard house or any other property which could be used for security purposes shall not constitute a promise or obligation on or of the Association or Developer to provide security services either now or in the future. In the event that any security service or device is provided by the Association, or the Developer, the Association or Developer shall be entitled to discontinue any such security service or services, or device or devices, at any time and from time to time, and neither Association nor Developer is responsible for any losses or damages caused by such discontinuation of service. In no event shall either the Association or the Developer be responsible for any damages caused by any loss of property or injury caused to any person located within Deer Creek caused by theft, criminal activity or other activity which could or might have been prevented by a security service or device.

37. NOTIFICATION TO UTILITY COMPANIES: In order to beautify said subdivision for the benefit of all lot owners and to permit the utility companies to install underground utility services to each house in said subdivision, no owner of any lot within such subdivision will commence construction of any house on any lot until such owner (1) notifies the utility companies that such construction is proposed, (2) grants in writing to said companies such rights and easements as they request in connection with their construction, operation, maintenance and removal of the underground service laterals on each lot and (3) provides at his, her or its own expense, and in accordance with specifications to be furnished by the utilities, all excavating, trenching and backfilling which said utility company requests in connection with the installation of the underground service or service laterals on each lot. To the extent of the interest of the owner of each lot, such owner agrees to connect utility service lines (including, but not limited to, gas, water, sewer and electricity) at points designated by Declarant.
  
38. RIGHTS GRANTED TO ALABAMA POWER COMPANY: Alabama Power Company is hereby granted the right to construct, install, operate and maintain its facilities, including all conduits, cables, trans closures and other appliances useful or necessary in connection therewith, within a ten (10) foot easement along that portion of each lot abutting a dedicated street, and any other utility easement shown, for the underground transmission and distribution of electric power; together with all the rights and privileges necessary or convenient for the full enjoyment or use thereof, including (i) the right of ingress and egress to and from said facilities, (ii) the right to excavate for installation, replacement, repair, and removal thereof, and also (iii) the right to cut and keep clear all trees, underbrush, shrubbery, roots and other growth, and to keep clear any and all obstructions or obstacles of whatever character on, under and above said facilities. Also included in the rights granted herein is the right to install service laterals running from said ten (10) foot wide easement to the dwellings or buildings constructed on the lots within this plat.



39. ANTENNAS AND DISHES: No visible ham radios, radio transmission equipment, television antennas, radio antennas or television satellite dishes shall be permitted on the property unless prior approval is obtained from the ARC.
40. MEMBER OF ASSOCIATION; LIABILITY FOR ASSESSMENTS: Each owner of a fee simple interest in a lot shown on this plat shall automatically become a Member of the Association and shall be fully and completely bound by all of the terms and conditions of the Articles and the Bylaws of the Association, as they may be modified and amended from time to time, including, without limitation, the obligation to pay any and all applicable Assessments levied from time to time by the Association on each lot and the right of the Association to enforce payment of the Assessment as provided in the Bylaws. All of the terms and provisions of the Articles and the Bylaws applicable with respect to each lot shown herein and to the owner of such lot by virtue of being a Member of the Association are incorporated herein by reference as if set forth herein in their entirety. Each lot shown on this plat is a Residential Lot, as defined in the Bylaws.
41. LIEN FOR ASSOCIATION ASSESSMENTS: The Association is hereby granted a lien upon each lot and its appurtenances and each Member's interest in the Association to secure the payment to the Association of any and all Assessments assessed and levied against the lot and all charges, including interest and all reasonable attorneys' fees, including appellate attorneys' fees, court costs and other expenses, incurred by the Association in collecting or attempting to collect such Assessments. If any portion of an Assessment or charge hereunder remains unpaid for a period of sixty (60) days after the date such amounts were due, then the Association may, by written notice of default sent to the owner of the lot, demand payment of all delinquent amounts and charges. If the owner does not pay all amounts due within ten (10) days after receipt of the notice of default, the Association may file a notice of lien against the lot in the Office of the Judge of Probate of Montgomery County, Alabama. Each lot owner hereby expressly grants to the Association a power of sale for such lot along with its lien hereunder. The lien provided for herein may be foreclosed in the same manner as a foreclosure of a mortgage on real property under the laws of the State of Alabama, as the same may be modified or amended from time to time. The Association shall have the right and power to bid at any such foreclosure sale and to purchase, acquire, exchange, hold, lease, mortgage, convey and sell any such lot acquired. Notwithstanding anything provided herein to the contrary, the lien for Assessments and other charges authorized herein with respect to any lot is and shall be subordinate to: (1) all liens for taxes, bonds, prior assessments, and other levies which by law would be superior thereto and (2) the lien or charge of any first mortgage of record made in good faith and for value. No lot owner may escape or avoid responsibility for Assessments by waiver of the use of or enjoyment of any of the Association Property or by the abandonment or non-use of such owner's lot, or by any other means.
42. INDEMNIFICATION: The Association has agreed to indemnify and hold harmless every officer, director and committee member of the Association, including, but not limited to, the members of the Board and the members of the ARC, from and against any and all costs and expenses, including trial and appellate attorney's fees and costs, reasonably incurred by or imposed upon any officer, director or committee member in connection with any action, suit or other proceedings to which he or she may be a party, by reason of being or having been an officer, director or committee member of the Association, the Board or the ARC. The officers, directors and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful malfeasance, willful misconduct or bad faith, with regard to the business of the

Association or the ARC. The officers, directors and committee members shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association, except to the extent that they may be a Member of the Association, and the Association shall indemnify and forever hold each of said officers, directors and committee members free and harmless against any and all liability to others on account of any such contract or commitment. Any right of indemnification provided for herein shall not be exclusive of any other rights to which any officer, director or committee member, or former officer, director or committee member, may be entitled. The Association may, as a part of the expenses of the Association, maintain adequate general liability insurance, and officers and directors liability insurance to fund this obligation, if such insurance is reasonably available and deemed to be appropriate for the Association by its Board.

43. DEVELOPER DEFINED; DEVELOPER'S RIGHTS: Wherever the term "Developer" or "Declarant" is used herein it shall mean Vaughn Road, L.L.C., its successors and assigns. These covenants and restrictions touch and benefit all the land reflected on the above referenced plat map and shall run with the land and shall be binding upon the land and all lot owners within the plat, their heirs, successors and assigns, the utilities referenced herein either specifically or generally, and their successors and assigns. The Developer expressly reserves the sole and exclusive right and privilege, both for itself and its successors and assigns, to change, alter, modify or amend any of the terms, covenants and provisions of this Declaration or to grant a variance to or from any of the terms, covenants and provisions of this Declaration, without the consent or approval of the owners of lots in this plat until the Class E Membership Termination Date, as defined in the Bylaws, provided, however, that, if any such change, alteration, modification, amendment or variance affects the basic organization of the Association, or concerns the annexation of real property (except for such property which has been previously approved by the Department of Veterans Affairs. After the Class E Membership Termination Date (as defined in the Bylaws of the Association), this Declaration may be amended by the approval of seventy-five (75%) percent of the owners of lots within this plat, as amended.
44. APPROVED CONTRACTORS: All improvements constructed on any lot located within Deer Creek shall be made by a contractor or builder approved by the Association and/or the ARC. The Association and/or the ARC may, at its sole discretion, establish criteria and requirements upon which a contractor or builder may or may not be approved to construct improvements on properties in Deer Creek. This covenant is not to be construed as an attempt to show prejudice, malice or favor toward any person or entity, but only to attempt to discourage unscrupulous and/or undesirous business in Deer Creek. By approving or disapproving any contractor neither the Association nor the ARC shall be deemed to pass upon the character or reputation of any contractor or to warrant or guarantee the performance or work of any such contractor in any manner whatsoever.
45. CONSTRUCTIVE NOTICE AND ACCEPTANCE: Every person, corporation, partnership, limited liability company, limited partnership, trust, association or other legal entity, who or which shall hereafter own or acquire any right, title, interest or estate in or to any lot, whether or not such interest is reflected in the Office of the Judge of Probate of Montgomery County, Alabama, shall be conclusively deemed to have consented and agreed to each and every covenant, condition, restriction, reservation and easement contained or by reference incorporated herein, including, but not limited to, the Articles and the Bylaws, whether or not any reference to this Declaration is contained in the document or instrument pursuant to which such person, corporation, partnership, limited

liability company, limited partnership, trust, association or other legal entity shall have acquired such right, title, interest or estate in the lot or any interest therein.

46. ENFORCEMENT; ATTORNEYS' FEES: Enforcement of these protective covenants may be instituted by the Declarant, the Association, the ARC and/or the owner of any lot in the manner prescribed herein or by a proceeding at law or in equity against the person, persons, or legal entities violating or attempting to violate any of these covenants. Any action may be either to restrain violation or to recover damages therefor. Notwithstanding anything herein contained to the contrary, in the event of litigation arising out of the interpretation or enforcement of the rights or obligations under this Declaration, the Declarant, the Association and the ARC shall each be entitled to recover its costs and expenses in connection with such litigation, including, but not limited to, reasonable attorneys' fees, costs and expenses, which may be awarded by the court before whom such litigation is brought.
47. PARAGRAPH HEADINGS: Paragraph headings, where used herein, are inserted for convenience only and are not intended to be a part of this Declaration or in any way define, limit or restrict the scope and intent of the particular sections or paragraphs in which they are contained or to which they refer.
48. EFFECT OF INVALIDATION: If any particular provision of this Declaration is held to be invalid by any court, the invalidity of such provision shall not affect the validity of the remaining provisions hereof.
49. TERM; AMENDMENT: The above and foregoing covenants and restrictions shall continue in force and effect for a period of twenty-five (25) years from and after the date this Plat is recorded in the Office of the Judge of Probate of Montgomery County, Alabama; subject, however, to Developer's express right and privilege to change, alter, modify or amend the same as provided in Paragraph 43 hereof. Thereafter, the above and foregoing covenants and restrictions shall be automatically renewed for successive periods of ten (10) years each; provided, however, that following the expiration of said twenty-five (25) year period, said covenants and restrictions may be modified, amended or terminated in whole or in part by a written instrument that (i) has been signed and acknowledged by three-fourths (3/4ths) or more of the owners of lots in this plat, (ii) has been signed and acknowledged by the Association, and (iii) has been recorded in the Office of the Judge of Probate of Montgomery County, Alabama.
50. ABSENCE OF COMMON SCHEME: Notwithstanding anything to the contrary provided herein, it is understood and agreed that the covenants and restrictions imposed hereunder shall not be deemed to create a common scheme or to restrict any other property now or heretofore or hereafter owned by Declarant other than the lots shown on this Plat which are made subject to this Declaration by the execution, acknowledgment and recordation of this Plat.
51. WAIVER: None of the terms or provisions of this Declaration can be waived, modified or amended except by a written instrument duly signed by the party against whom such waiver, modification or amendment is sought to be enforced.
52. NO REVERTER: No provision of this Declaration is intended to create, or shall be construed as creating, a condition subsequent to or a possibility of reverter.

53. GENDER: Throughout this Declaration the masculine gender shall be deemed to include the feminine and neuter, and the singular, the plural, and vice versa, unless otherwise clear from the context in which such term is used.

STATE OF ALABAMA     )  
MONTGOMERY COUNTY    )

The undersigned, Vaughn Road, L.L.C., an Alabama limited liability company, owner of the property shown above, hereby joins in, executes and signs the foregoing Surveyor's Certificate, Plat, Map and Declaration of Protective Covenants, Conditions and Restrictions and adopts and approves this said instrument on this the \_\_\_\_\_ day of \_\_\_\_\_, 2002.

Vaughn Road, L.L.C., an Alabama  
limited liability company

By:     Aronov Land Co., Inc.,  
        an Alabama corporation  
        As Manager

By:\_\_\_\_\_

By:     Lowder New Homes, Inc.,  
        an Alabama corporation  
        As Manager

By:\_\_\_\_\_

        Alan S. Farrior, President

**Joinder**

AmSouth Bank of Alabama, a corporation, hereby joins in and executes this instrument for the purpose of consenting and agreeing to the above and foregoing Declaration.

AmSouth Bank of Alabama, a corporation

By:\_\_\_\_\_

As Its:\_\_\_\_\_

STATE OF ALABAMA        )  
MONTGOMERY COUNTY    )

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Jake F. Aronov, whose name as President of Aronov Land Company, Inc., in the corporation's capacity as a Manager of Vaughn Road, L.L.C., 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 the instrument, he, on behalf of said Manager and 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 \_\_\_\_\_, 2002.

Notary Public  
My commission expires:

STATE OF ALABAMA        )  
MONTGOMERY COUNTY    )

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Alan S. Farrior, whose name as President of Lowder New Homes, Inc., in the corporation's capacity as a Manager of Vaughn Road, L.L.C., 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 the instrument, he, on behalf of said Manager and 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 \_\_\_\_\_, 2002.

Notary Public  
My commission expires:

STATE OF ALABAMA        )  
MONTGOMERY COUNTY    )

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that \_\_\_\_\_, whose name as \_\_\_\_\_ of AmSouth Bank of Alabama, a corporation, 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 the instrument, he, on behalf of said corporation and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this the \_\_\_\_\_ day of \_\_\_\_\_, 2002.

Notary Public

My commission expires: