

STATE OF ALABAMA     )  
  :  
MADISON COUNTY     )

**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR  
THE SOVEREIGN POINT**

**THIS DECLARATION** is made on the date hereinafter set forth by **AGAPE BUILDERS, LLC, an Alabama limited liability company** (hereinafter sometimes called “Declarant”);

**WITNESSETH**

WHEREAS, Declarant is the owner of the real property described in Exhibit “A” attached hereto and by reference made a part of this Declaration; and

WHEREAS, Declarant desires to subject the real property described in said attached Exhibit “A” hereof to the provisions of this Declaration to create a residential community of single-family housing and to provide for the subjecting of other real property to the provisions of this Declaration;

NOW, THEREFORE, Declarant hereby declares that the real property described in attached Exhibit “A” of this Declaration, including the improvements constructed or to be constructed thereon, is hereby subjected to the provisions of this Declaration and shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments, and liens hereinafter set forth, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the real property hereby or hereafter made subject hereto, and shall be binding on all persons having any right, title, or interest in all or any portion of the real property now or hereafter made subject hereto, their respective heirs, legal representatives, successors, successors-in-title, and assigns and shall inure to the benefit of each and every owner of all or any portion thereof. Declarant reserves the right to modify this Declaration of Covenants, Conditions and Restrictions for The Sovereign Point at its sole discretion

**THIS DECLARATION DOES NOT AND IS NOT INTENDED TO CREATE A CONDOMINIUM REGIME SUBJECT TO THE ALABAMA CONDOMINIUM OWNERSHIP ACT OF 1973, ALA. CODE SECTION 35-8-1 et seq.**

**Article I**  
**Definitions**

Unless the context shall prohibit, certain words used in this Declaration shall be defined as set forth in Exhibit “B”, attached hereto and by reference made a part hereof.

**Article II**  
**Property Subject To This Declaration**

Section 1. Property Hereby Subjected To This Declaration. The real property which is, by the recording of this Declaration, subject to the covenants and restrictions hereafter set forth and which, by virtue of the recording of this Declaration, shall be held, transferred, sold, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to this Declaration is the real property described in Exhibit "A", attached hereto and by reference made a part hereof.

Section 2. Other Property. Only the real property described in Exhibit "A" attached hereto is hereby made subject to this Declaration; provided, however, by one or more Supplementary Declarations, Declarant and the Association have the right, but not the obligation, to subject other real property to this Declaration as hereinafter provided.

Section 3. Limited Rights to CA1 and CA2. The common area detention ponds CA1 and CA2 are not meant to be treated as traditional common areas to be accessed and enjoyed by Lot Owners, but rather required functional areas that meet Huntsville City drainage requirements. Lot Owners should refrain from accessing these areas unless required for maintenance of the areas.

**Article III**  
**Association Membership and Voting Rights**

Declarant shall form a non-profit corporation named The Sovereign Point Owners Association, Inc. ("HOA") which shall be charged with the responsibility of the maintenance and management of the two-detention pond common areas known as CA1 and CA2 and the reserved green space known as Tract A.

Section 1. Membership. Every Person who is the record Owner of a fee or undivided fee interest in any Lot that is subject to this Declaration shall be deemed to have a membership in the Association. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. No Owner, whether one or more Persons, shall have more than one (1) membership per Lot. In the event of multiple Owners of a Lot, votes and rights of use and enjoyment shall be as provided in this Declaration and in the By-Laws. Membership shall be appurtenant to and may not be separated from ownership of any Lot. The rights and privileges of membership, including the right to vote and to hold office, may be exercised by a member or the member's spouse, but in no event shall more than one (1) vote be cast nor office held for each Lot owned.

Section 2. Voting. Members shall be entitled to one (1) vote for each Lot owned. When more than one Person holds an ownership interest in any Lot, the vote for such Lot shall be exercised as those Owners themselves determine and advise the Secretary prior to any meeting. In the absence of such advice, the Lot's vote shall be suspended in the event more than one Person seeks to exercise it.

Section 3. Indemnification. The Association shall indemnify every officer, director, and Architectural Control Committee (“ACC”) and other committee member against all damages and expenses, including attorney's fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or ACC or other committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section, the Articles of Incorporation and Alabama law.

The officers, directors, and ACC and other committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers, directors and ACC and other committee members shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers, directors or ACC or other committee members may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director and ACC and other committee member harmless from any and all liability to others on account of any such contract, commitment or action of the Association. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or ACC or other committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

THE ASSOCIATION SHALL HAVE NO AUTHORITY TO ENFORCE THESE COVENANTS, CONDITIONS AND RESTRICTIONS AGAINST THE DECLARANT, NOR SHALL THE ASSOCIATION HAVE ANY POWER OF AUTHORITY TO PERFORM ANY ACTS REQUIRED OR ALLOWED UNDER THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS UNTIL THE RIGHTS OF THE DECLARANT ARE TERMINATED AND SURRENDERED UNDER THE PROVISIONS OF THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS. THE FIRST ANNUAL MEETING OF THE HOMEOWNER’S ASSOCIATION SHALL BE CALLED BY THE DECLARANT AFTER ALL LOTS ARE SOLD UNLESS THE DECLARANT DEEMS OTHERWISE.

**Article IV**  
**Assessments**

Section 1. Purpose of Assessment. The assessments provided for herein shall be used for general purposes and common benefit of the Owners and occupants of Lots, including the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors.

Section 2. Creation of the Lien and Personal Obligation for Assessments. The Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association: (a) General Assessments and/or annual assessments or charges; (b) Special Assessments, such assessments to be established and collected as hereinafter

provided; (c) Specific Assessments against any particular Lot that are established pursuant to the terms of this Declaration, including, but not limited to, reasonable fines, as may be imposed in accordance with the terms of this Declaration; and (d) Capitalization Assessments. All such assessments, together with late charges, interest, not to exceed the maximum legal rate, costs, and reasonable attorney's fees actually incurred, shall be a charge on the land and shall be a continuing lien upon the Lot against which each assessment is made. Each such assessment, together with late charges, interest, costs, and reasonable attorney's fees actually incurred, shall also be the personal obligation of the person who was the Owner of such Lot at the time the assessment fell due. Each Owner shall be personally liable for his or her portion of each assessment coming due while he or she is the Owner of a Lot, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance to the extent expressly assumed; provided, however, the liability of a grantee for the unpaid assessments of its grantor shall not apply to any first Mortgagee holder taking title through foreclosure proceedings or deed in lieu of foreclosure.

The Association shall, within five (5) days after receiving a written request therefor and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot shall be binding upon the Association as of the date of issuance.

Assessments shall be levied equally on all Lots. Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors, which may include, without limitation, acceleration, upon ten (10) days written notice, of the annual assessment for delinquents. Unless otherwise provided by the Board, the assessment shall be paid in annual installments.

Section 3. Computation. It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during the coming year, which shall include a capital contribution or reserve in accordance with a capital budget separately prepared. The Board shall cause the budget and the assessments to be levied against each Lot for the following year to be delivered to each member at least ten (10) days prior to the end of the current fiscal year. The budget and the assessment shall become effective unless disapproved, at a meeting by a Majority of the total Association vote and the Declarant (so long as the Declarant owns any Property subject to this Declaration). Notwithstanding the foregoing, however, in the event the membership disapproves the proposed budget or the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the then current year shall continue for the succeeding year.

Section 4. Special Assessments. In addition to the other assessments authorized herein, the Association may levy special assessments from time to time if approved by two-thirds (2/3) of the total Association vote and the Declarant (so long as the Declarant owns any Property subject to this Declaration). Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

Section 5. Lien for Assessments. All sums assessed against any Lot pursuant to this Declaration, together with late charges, interest costs, and reasonable attorney's fees actually incurred, as provided herein, shall be secured by a lien on such Lot in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such Lot, except for (a) liens for ad valorem taxes; or (b) liens for all sums unpaid on a first mortgage or on any mortgage to Declarant duly recorded in the land records of the county where the Community is located and all amounts advanced pursuant to such mortgage and secured thereby in accordance with the terms of such instrument.

All other persons acquiring liens or encumbrances on any Lot after this Declaration shall have been recorded in such records shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

Section 6. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessments, or installments thereof, that is not paid when due shall be delinquent. Any assessment or installment thereof delinquent for a period of more than ten (10) days shall incur a late charge in an amount as the Board may from time to time determine. The Association shall cause a notice of delinquency to be given to any member who has not paid within ten (10) days following the due date. If the assessment is not paid within thirty (30) days, a lien, as herein provided, shall attach and, in addition, the lien shall include the late charge, interest, not to exceed the maximum legal rate on the principal amount due, and all late charges from the date first due and payable, all costs of collection, reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law. In the event that the assessment remains unpaid after sixty (60) days, the Association may, as the Board shall determine, institute suit to collect such amounts and to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Association or its agents the right and power to bring all actions against him or her, personally, for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid on the Lot at any foreclosure sale or to acquire, hold, lease, mortgage, or convey the same.

No Owner may waive or otherwise exempt himself from liability for the assessments provided for herein, including, by way of illustration but not limitation, abandonment of the Lot. No diminution or abatement of any assessment 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 or performed by the Association under this Declaration or the By-Laws, or for inconvenience or discomfort arising from the making of repairs or improvements that are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority. The obligation to pay assessments is a separate and independent covenant on the part of each Owner.

All payments shall be applied first to costs and attorney's fees, then to late charges, then to interest, and then to delinquent assessments.

Section 7. Date of Commencement of Assessment. The obligation to pay assessments shall commence as to each Lot at the time the Declarant conveys any Lot owned by it to a third party. The initial capital contribution shall be assessed at closing. General Assessments will be due January 1 of each year beginning January 1, 2023. The first annual General Assessment levied on each Lot shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Lot. Thereafter, General Assessments shall be prorated between sellers and purchasers of a Lot at closing.

Section 8. Specific Assessments. The Association shall have the power to levy Specific Assessments against a particular Lot or Lots to cover costs incurred in bringing the Lot(s) into compliance with the terms of this Declaration, any applicable Supplemental Declaration, or Rules and Regulations, or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their agents, contractors, employees, licenses, invitees, or guests; provided however, the Board shall give the Lot Owner prior written notice and an opportunity for a hearing before levying any Specific Assessment. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. Fines levied pursuant to this Declaration and the costs of maintenance performed by the Association for which the Owner is responsible shall be specific assessments. The Board may also specifically assess Lots for the following Association expenses, excluding expenses incurred for maintenance and repair of items that are the maintenance responsibility of the Association as provided herein:

(a) Expenses of the Association that benefit less than all of the Lots may be specifically assessed equitably among all of the Lots that are benefited according to the benefit received.

(b) Expenses of the Association that benefit all Lots, but which do not provide an equal benefit to all Lots, may be assessed equitably among all Lots according to the benefit received.

Section 9. Budget Deficits During Declarant Control. For so long as the Declarant has the authority to appoint the directors and officers of the Association, Declarant may: (i) advance funds to the Association sufficient to satisfy the deficit, if any, between the actual operation expenses of the Association (but specifically excluding an allocation for capital reserves), and the sum of the annual, special and specific assessments collected by the Association in any fiscal year. Such advances shall be evidenced by promissory notes from the Association in favor of the Declarant; or (ii) cause the Association to borrow such amount from a commercial lending institution at the then prevailing rates for such a loan in the local area of the Community. The Declarant, in its sole discretion, may guarantee repayment of such loan, if required by the lending institution, but no Mortgage secured by the Common Property or any of the improvements maintained by the Association shall be given in connection with such loan.

Section 10. Capitalization of Association. Upon sale of a Lot from Declarant to first third party Owner, a contribution shall be made by or on behalf of the purchaser to the working capital of

the Association in an amount equal to \$200.00. This amount shall be in addition to, not in lieu of, the annual General Assessment and shall not be considered an advance payment of such assessment. This amount shall be collected and disbursed to the Association at closing of the purchase and sale of the Lot for use in covering operating expenses and other expenses incurred by the Association pursuant to this Declaration.

Section 11. Failure to Assess. Failure of the Board to establish assessment amounts or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay General Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

Section 12. Exempt Property. The following property shall be exempt from payment of General Assessments, Special Assessments, Specific Assessments, and Capital Contributions: all Common Area and such portions of the Property owned by the Declarant.

## **Article V**

### **Maintenance & Conveyance of Common Property to the Association**

Section 1. Association's Responsibility. The Association shall maintain and keep in good repair the two-detention pond common areas known as CA1 and CA2. This maintenance shall include, without limitation, general maintenance, repair and replacement of all landscaping, control of grass and weeds, removal of junk and litter, pest and rodent control, as well as water quality control, maintenance of the side slopes, erosion and siltation/sedimentation control, security, water levels, and any such other maintenance necessary for aesthetics, functionality and safety of the detention ponds. Detention ponds shall have silt removed as required by Huntsville City regulations. The foregoing maintenance shall be performed consistent with the community wide standard and shall conform to any applicable municipal ordinances and regulations.

In addition, the Association shall have the right, but not the obligation, to maintain other property not owned by the Association, whether within or without the Community, where the Board has determined that such maintenance would benefit all Owners.

In the event that the Association determines that the need for maintenance, repair, or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, his or her family, guests, lessees, or invitees, and is not covered or paid for by insurance, in whole or in part, then the Association may perform such maintenance, repair or replacement at Owner's sole cost and expense, and all costs thereof shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Lot.

The foregoing maintenance shall be performed consistent with the Community-Wide Standard and shall conform to any applicable municipal ordinances and regulations.

Section 2. Owner's Responsibility. Except as provided in Section 1 above, all maintenance of the Lot and all structures, parking areas, landscaping, and other improvements thereon shall be the sole responsibility of the Owner thereof, who shall maintain such Lot in a manner consistent with the Community-Wide Standard and this Declaration. In the event that the Board of Directors of the Association determines that any Owner has failed or refused to discharge properly his obligations with regard to the maintenance, repair, or replacement of items for which he is responsible hereunder, the Association shall, except in an emergency situation, give the Owner written notice of the Association's intent to provide such necessary maintenance, repair, or replacement at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repairs, or replacement deemed necessary. The Owner shall have thirty (30) days after receipt of such notice within which to complete such maintenance, repair, or replacement, or, in the event that such maintenance, repair, or replacement is not capable of completion within a thirty (30) day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair, or replacement at Owner's sole cost and expense, and all costs shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Lot.

Section 3. Conveyance of Common Property by Declarant to Association. The Declarant may transfer or convey to the Association any personal property and any improved or unimproved real property, leasehold, easement, or other property interest that is or may be subjected to the terms of this Declaration. Such conveyance shall be accepted by the Association, and the property shall thereafter be Common Property to be maintained by the Association for the benefit of all or a part of its Members. Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section.

## **Article VI** **Use Restrictions and Rules**

Section 1. General. This Article, beginning at Section 2, sets out certain use restrictions that must be complied with by all Owners and Occupants. These use restrictions may only be amended in the manner provided in this Declaration. In addition, the Board may, from time to time, without consent of the Owners, promulgate, modify, or delete other use restrictions and rules and regulations applicable to the Community. Such use restrictions and rules shall be distributed to all Owners prior to the date that they are to become effective and shall thereafter be binding upon all Owners and Occupants until and unless overruled, canceled, or modified in a regular or special meeting by a Majority of the total Association vote entitled to vote thereon and the consent of Declarant (so long as the Declarant owns Property subject to this Declaration).

Section 2. Residential Use. All Lots shall be used for single-family residential purposes exclusively. No business or business activity shall be carried on in or upon any Lot at any time except with the written approval of the Board. For purposes of this Section, garage, porch or basement sales shall be considered a business activity. Leasing of a Lot shall not be considered a business or business activity. However, the Board may permit a Lot to be used for business purposes so long as such business, in the sole discretion of the Board, does not otherwise violate the

provisions of the Declaration or By-Laws, does not create a disturbance, does not unduly increase traffic flow or parking congestion and is allowed as a home occupation by ordinances of the City of Huntsville. The Board may issue rules regarding permitted business activities. No building shall be erected, altered, placed, or permitted to remain on any lot other than one detached single-family dwelling and one private garage for the accommodation of not more than four automotive vehicles. No structure of a temporary character including, without limitation, a trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently.

Section 3. Signs. No sign of any kind shall be erected by an Owner or occupant of a Lot within the Community without the prior written consent of the Architectural Control Committee. Notwithstanding the foregoing, the Lot Owner shall have the right to erect reasonable and appropriate signs, "For Sale" and "For Rent", of not more than four (4) square feet and consistent with the Community-Wide Standard, upon any Lot, and any builder may erect one (1) sign not larger than ten (10) square feet to advertise the property during the construction and sale period. This restriction shall not apply to entry signs or signs advertising the property for sale placed by the Declarant.

Section 4. Vehicles. The term "vehicles," as used herein, shall include, but not limited to motor homes, boats, trailers, motorcycles, mini-bikes, scooters, go-carts, trucks, campers, buses, vans, recreational vehicles, tractors, mowers, airplanes, and automobiles. All vehicles shall be parked within garages, driveways or other paved parking areas located on a Lot. Parking of any vehicle in yards is prohibited.

No vehicle may be left upon any portion of the Community, except in a garage or other area designated by the Board, for a period longer than ten (10) days if it is unlicensed or if it is in a condition such that it is incapable of being operated upon the public highways. After such ten (10) day period, such vehicle shall be considered a nuisance and may be removed from the Community. No towed vehicle, boat, trailer, bus, camper, recreational vehicle, motor home, tractor, mower or mobile home shall be temporarily kept or stored in the Community for any period in excess of ten (10) days unless kept in a garage, or other hard-surfaced areas which are not visible from the street and to the rear of a line drawn parallel with the rear of the single family dwelling located on the Property, or other area designated by the Board; vehicles parked in violation of this provision shall be considered a nuisance and may be removed from the Community. No eighteen-wheel trucks or the cabs of such trucks shall be parked, kept or stored within the Community, and if so parked, kept, or stored shall be considered a nuisance and may be removed from the Community. No motorized vehicles shall be permitted on pathways or unpaved Common Property except for public safety vehicles and vehicles authorized by the Board.

Section 5. Leasing. Homes may be leased for residential purposes only. All leases shall have a minimum term of six (6) months. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration, By-Laws, use restrictions and rules and regulations of the Association. The lease shall also obligate the tenant to comply with the foregoing

and shall provide that in the event of noncompliance, the Board, in addition to any other remedies available to it, may evict the tenant on behalf of the Owner and specifically assess all costs associated therewith against the Owner and the Owner's property.

Section 6. Occupants Bound. All provisions of the Declaration, By-Laws, and of any rules and regulations, use restrictions or design guidelines promulgated pursuant thereto that govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants even though Occupants are not specifically mentioned. Fines may be levied against Owners or Occupants. If a fine is first levied against an Occupant and is not paid timely, the fine may then be levied against the Owner.

Section 7. Animals and Pets. No animals other than those animals allowed as controlled by the City of Huntsville zoning ordinance shall be raised, bred, or kept on any Lot. No pets shall be kept, bred or maintained for any commercial purpose. Dogs that are household pets shall at all times, whenever they are outside, be on a leash or otherwise confined in a manner acceptable to the Board. Animal control authorities shall be permitted to enter the Community to patrol and remove pets. Pets shall be registered, licensed and inoculated as required by law.

Section 8. Nuisance. It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition of his or her property. No building shall be permitted to stand with its exterior in an unfinished condition for longer than six (6) months after commencement of construction. No property within the Community shall be used, in whole or in part, for the storage of any property or thing that will cause such lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the Occupants of surrounding property. No noxious or offensive activity shall be carried on within the Community, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any property within the Community. There shall not be maintained any plants or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the community. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other Sound device, except such devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any Lot unless required by law.

Section 9. Unsightly or Unkempt Conditions. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken in any visible part of the Community.

Section 10. Architectural Standards. No exterior construction, addition, erection, or alteration shall be made unless and until plans and specifications showing at least the nature, kind, shape, height, materials, colors, and location shall have been submitted in writing to and approved by an Architectural Control Committee established by the Board.

Section 11. Antennas. No satellite dish or other type of antenna shall be located on any lot, except to the rear of a line drawn parallel with the front of a single-family dwelling located on the property.

Section 12. Tree Removal. The City of Huntsville Slope Development District, SDD, Ordinances cover removal of vegetation and trees on individual lots. The Architectural Control Committee shall have the right on non-SDD lots to control tree removal greater than 10 inches in diameter, except for diseased or dead trees or trees needing to be removed for construction and safety reasons. No clear cutting of trees on any lot will be allowed.

Section 13. Drainage and Grading. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or occupant of a Lot may obstruct or re-channel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. Declarant hereby reserves a perpetual easement across all Community property for the purpose of altering drainage and water flow. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense. No Person shall alter the grading of any Lot without prior written approval by the Architectural Control Committee.

Section 14. Sight and Distance Obstructions. No hedge or shrub planting which obstructs sight lines at elevations between two and six feet above the roadways shall be placed or permitted to remain within 10 feet from the intersection of a street property line with the edge of a driveway pavement. No tree shall be permitted to remain within such distances of such intersection unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines. To the contrary notwithstanding herein no fence or wall, except retaining wall, shall be located any closer to the street than the Minimum Building Setback Line of 40 feet.

Section 15. Clotheslines, Garbage Cans, Woodpiles, Etc. No clothesline or other outside apparatus for drying clothes shall be erected or permitted to remain on any lot, unless completely concealed and enclosed, or unless otherwise approved in writing by the Architectural Control Committee. All garbage cans, woodpiles, swimming pool pumps, filters, and related equipment and other similar items shall be located or screened to be concealed from view of neighboring streets and property and shall be kept in a clean and sanitary condition. No lot shall be used or maintained as a dumping ground for rubbish, trash, garbage, or other waste and same shall not be kept except in sanitary containers. All construction debris, rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate.

Section 16. Subdivision of Lot. No Lot shall be subdivided, or its boundary lines changed after a subdivision plat, including such Lot, has been approved and filed in the Public Records.

Section 17. Occupancy of Unfinished Lots. No dwelling erected upon any Lot shall be occupied in any manner before commencement of construction or during construction, nor at any time prior to the dwelling being fully completed. For the purposes of this Section, commencement of

construction shall mean that (a) all plans for such construction have been approved by the ACC; (b) a building permit has been issued for the Lot by the City of Huntsville; and (c) construction of a residential dwelling on the Lot has physically commenced beyond site preparation. Completion of a dwelling shall mean that a certificate of occupancy has been issued by the City of Huntsville for the Lot.

Section 18. Fences. No fence or fencing type barrier of any kind shall be placed, erected, allowed or maintained upon any portion of this Subdivision, including any Lot, without the prior written consent of the Architectural Control Committee. Fences must be of wood and compatible within the residence and have architectural interest and located at the rear of the residence. Flat wood fencing that does not have architectural interest and visual relief will not be approved. No fence will be higher than six feet and the final ground level to the top of the fence except by special permission of the Architectural Control Committee. The exterior side of the fence must be finished, specifically the structural characteristics must be covered. Within the construction of the fence, there must be some brick or stone masonry, and stone or brick is the preferred material to use at the corner posts. No rough sawn board of any kind will be used in the fence. All wood will be painted or opaque stained and maintained in & satisfactory manner. No chain link fence will be allowed within the subdivision. Fences, regardless of construction, will not be permitted any nearer to front lot line than the rear most corner of the dwelling, except in special circumstances as permitted by the Architectural Control Committee.

Section 19. Utility Lines. No overhead utility lines, including lines for cable television, shall be permitted within the Community, except for temporary lines as required during construction.

Section 20. Air Conditioning Units. No air conditioning or heating unit, or structure related thereto shall be erected, placed, constructed, or permitted to remain between the side of any building or structure and the side lot line on which such building or structure is located unless the same are properly enclosed or landscape screened in conformity with general architecture of the primary residential building or structure. Except as may be permitted by the Architectural Control Committee, no window air conditioning units may be installed.

Section 21. Artificial Vegetation, Exterior Sculpture, and Similar Items. No artificial vegetation shall be permitted on the exterior of any property. Exterior sculpture, fountains, flags, and similar items must be approved by the Architectural Control Committee.

Section 22. Energy Conservation Equipment. No solar energy collector panels or attendant hardware, windmills or other energy conservation equipment shall be constructed or installed unless they are an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the Architectural Control Committee.

Section 23. Above Ground Swimming Pools. No above-ground pools may be installed on any lot in this Subdivision

Section 24. Lighting. Except for approved lighting as originally installed on a residence, exterior lighting visible from the street shall not be permitted, except for (a) one (1) decorative post

light; (b) a street light in conformity with an established street lighting program for the Community; (c) seasonal decorative lights; (d) front house illumination of model homes; or (e) landscape lighting approved by the Architectural Control Committee.

Section 25. Window Coverings. The portion of all window coverings visible from the exterior of any residence shall be white or off-white unless otherwise approved by the Architectural Control Committee.

Section 26. Standard Mailboxes. All mailboxes, erected on any Lot, must be the “standard designated” wrought iron design, as approved by the Architectural Control Committee.

Section 27. Gardens. No vegetable gardens, compost gardens, greenhouses or other food source planting shall be allowed in the front or on the sides of any residence on any Lot.

Section 28. Oil and Mineral Operations. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted on any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted on any Lot. No derrick or other structure designed for use in boring for oil, or any other substances, shall be erected, maintained or permitted on any Lot.

Section 29. Sidewalks. A sidewalk meeting the requirements of the City of Huntsville has been installed along the street fronting on those lots as required. The lot owner, prior to the issuance of a certificate of occupancy, is required to repair or replace any sidewalks removed or damaged during the construction process. Sidewalks shall not be altered or obstructed by any Owner or Occupant. Any sidewalk located on a Lot shall be neatly maintained by the Owner.

Section 30. Temporary Structure. No temporary or permanent storage or utility building of any type whatsoever which are not attached to the single-family dwelling shall be allowed, unless approved by the Architectural Control Committee.

## **Article VII**

### **Insurance and Casualty Losses**

Section 1. Insurance on Common Property. The Association’s Board of Directors or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements on the Common Property and the entry features, if any, which the Association is obligated to maintain. This insurance shall provide, at a minimum, fire and extended coverage, including vandalism and malicious mischief, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Alternatively, the Board may purchase “all-risk” coverage in like amounts.

The Board shall obtain a public liability policy applicable to the common Property covering the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents, and, if reasonably available, directors’ and officers’ liability insurance. The public liability policy shall have a combined single limit of at least One

Million (\$1,000,000.00) Dollars.

Premiums for all insurance shall be common expense of the Association. The policies may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association, as trustee for the respective benefited parties, as further identified in subparagraph (b), below. Such insurance shall be governed by the provisions hereinafter set forth:

(a) Policies shall be written with a company authorized to do business in Alabama.

(b) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(c) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees, and the insurance carried by the Association shall be primary.

(d) All casualty insurance policies shall have an inflation guard endorsement and an agreed amount endorsement if these are reasonably available and all insurance policies shall be reviewed annually by one or more qualified persons, at least one of whom must be in the real estate industry and, familiar with construction in the country where the Community is located.

(e) The Association's Board of Directors make every reasonable effort to secure insurance policies that will provide for the following:

(i) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners and their respective tenants, servants, agents, and guests;

(ii) a waiver by the insurer of its rights to repair and reconstruct instead of paying cash;

(iii) that no policy may be canceled, invalidated, or suspended on account of any one or more individual Owner;

(iv) that no policy may be canceled, subjected to non-renewal, invalidated, or suspended on account of any defect or the conduct of any director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect or to cease the conduct and the allowance of a reasonable time thereafter within which a cure may be affected by the Association, its manager, any

Owner or Mortgagee;

(v) that any “other insurance” clause in any policy exclude individual owners’ policies from consideration; and

(vi) that no policy may be canceled, subjected to non-renewal or substantially modified without at least thirty (30) days’ prior written notice to the Association.

In addition to the other insurance required by this Section, the Board shall obtain worker’s compensation insurance, if and to the extent necessary to satisfy the requirements of applicable laws, and a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association’s funds, if reasonably available. If obtained, the amount of fidelity coverage shall be determined in the directors’ best business judgment, and, if available, shall at least equal three (3) months’ assessments plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be canceled, subjected to non-renewal or substantially modified without at least thirty (30) days’ prior written notice to the Association.

Section 2. Individual Insurance. By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner acknowledges that the Association has no obligation to provide any insurance for any portion of individual Lots, and each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket all-risk casualty insurance on the Lot and all structures constructed thereon and a liability policy covering damage or injury occurring on a Lot. The casualty insurance shall cover loss or damage by fire and other hazards commonly insured under “all-risk” policy, if reasonably available, including vandalism and malicious mischief, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. If all-risk coverage is not reasonably available, Owners shall obtain, at a minimum, fire and extended coverage. The policies required hereunder shall be in effect at all times. Authority to adjust losses under policies obtained by an Owner shall be vested in the Owner.

Section 3. Damage and Destruction – Premises Insured by Association.

(a) In General. Immediately after damage or destruction by fire or other casualty to all or any portion of any improvement covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Section, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes.

(b) Repair and Reconstruction. Any damage or destruction to property covered by insurance written in the name of the Association shall be repaired or reconstructed unless, within sixty (60) days after the casualty, at least seventy-five (75%) percent of the total Association vote

and the Declarant (so long as the Declarant owns Property subject to this Declaration) otherwise agree. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed.

If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Association's members, levy a special assessment against all Owners in proportion to the number of Lots owned by such Owners. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited to the benefit of the Association.

In the event that it should be determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the property shall be restored to its natural state and maintained as an undeveloped portion of the Community by the Association in a neat and attractive condition.

Section 4. Damage and Destruction Premises Insured by Owners. The damage or destruction by fire or other casualty to all or any portion of any improvement on a Lot shall be repaired by the Owner thereof within ninety (90) days after such damage or destruction or, where repairs cannot be completed within ninety (90) days, they shall be commenced within such period and shall be completed within a reasonable time thereafter. Alternatively, the Owner may elect to demolish all improvements on the Lot and remove all debris therefrom within ninety (90) days after such damage or destruction. In the event of noncompliance with this provision, the Board of Directors shall have all enforcement powers specified in this Declaration.

### **Article VIII** **Architectural Standards**

Section 1. General. No building shall be erected, placed or altered on any lot until the construction plans and specifications and a plan showing the location of the structure have been approved by the Architectural Control Committee as to the quality of workmanship and materials, harmony of external design with existing structures, and the location with respect to topography and finish grade elevation. No fence or wall shall be erected, placed or altered on any lot nearer to any street than the Minimum Building Setback Line unless similarly approved. Approval shall be as hereinafter provided.

All dwellings constructed on any portion of the Property shall be designed by and built-in accordance with the plans and specifications of a licensed architect or other qualified building

designer. All primary residence construction and all improvements contemplated to be constructed, which are or may be subject to the standards of review set forth within this Declaration, must be built under the direct supervision of an individual who is a duly qualified Alabama general contractor or homebuilder having experience in mountainside/slope development construction. Said individual must, amongst other requirements, provide proof to the Architectural Control Committee, ACC, that they are a duly licensed, bonded and insured Alabama general contractor or homebuilder and that they are in good standing with the State of Alabama. No construction shall be commenced prior to the approval of the general contractor or homebuilder by the Architectural Control Committee, which approval may be unreasonably withheld. The Architectural Control Committee will not approve the use of any general contractor or homebuilder until such time as sufficient proof has been provided to the Architectural Control Committee that the construction of the improvement(s) will be properly supervised by a duly qualified individual who meets the standards of the Architectural Control Committee.

Section 2. Architectural Review. The Architectural Control Committee is composed of John Carlisle and Kay Carlisle. A majority of the Committee may designate a representative to act for it. In the event of death or resignation or any member of the Committee, the remaining members shall have full authority to designate a successor. Neither the members of the Committee, nor its designated representative, shall be entitled to any compensation for services performed pursuant to this covenant. It is distinctly understood and agreed that should any person constructing improvements on said lots commit a violation of the Minimum Setback Line or the building Architectural quality, location, or size, that a majority of the Architectural Control Committee will have the authority to waive such violation by an instrument in writing, signed by a majority of said committee.

Section 3. Procedures. Plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed structures and improvements shall be submitted to the Architectural Control Committee for review and approval (or disapproval). In addition, information concerning irrigation systems, drainage, lighting, landscaping, and other features proposed construction shall be submitted as applicable. In reviewing each submission, the committee may consider the quality of workmanship and design, harmony of external design with existing structures, and location in relation to surrounding structures, topography, and finish grade elevation, among other considerations. Decisions of the committee may be based on purely aesthetic considerations. Each Owner acknowledges that opinions on aesthetic matters are subjective and may vary as committee members change over time.

The Committee's approval or disapproval, as required in these covenants shall be in writing. In the event the Committee, or its designated representative fails to approve or disapprove within thirty (30) days after plans and specifications have been submitted to it, or in any event, if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required, and the related covenants shall be deemed to have been fully complied with.

Section 4. No Waiver of Future Approvals. Approval of proposals, plans, and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any

similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval. It is the intent of the Declarant that each Lot contain improvements that differ from improvements on other Lots to create a variety of unique and appealing improvements within the Property. To this end, the Architectural Control Committee may veto any proposals, plans and specifications, or drawings for any work done or proposed that the Architectural Control Committee determines are too similar in style and/or location on the Property to those previously approved.

Section 5. Variances. The Architectural Control Committee shall be authorized to grant individual variances from any of the provisions of this Declaration, the By-Laws and any rule, regulation or use restriction promulgated pursuant thereto if it determines that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the Community. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

Section 6. Limitation of Liability. Review and approval of any application pursuant to this Article is made based on aesthetic considerations and the guidelines set forth herein and the ACC shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with the guidelines, building codes and other governmental requirements. Neither the Declarant, the Architectural Control Committee, or member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved modifications to any Lot. In all matters, the committees and their members shall be defended and indemnified by the Association as provided in Article 3.

Section 7. Enforcement. If within its sole discretion, the Architectural Control Committee deems that any of these restrictive provisions have been violated, then, it may, at any time after three (3) days written notice to the offending property owner notifying the offending property owner to correct such violation, take such action as it deems appropriate to correct such violation and bill the offending property owner for the reasonable cost, (a fine of not less than \$100.00 per day), so incurred if such violation is not cured within said three (3) day period. If the offending property owner does not remit payment for such bill within ten (10) days, then, the Architectural Control Committee shall be entitled to a lien, as hereinafter defined, against the property of the owner located within this subdivision. The Architectural Control Committee may file a notice of lien in the Office of the Judge of Probate of Madison County, Alabama and file suit in the Circuit Court of Madison County, Alabama, to enforce said lien. The Architectural Control Committee shall be entitled to reimbursement of all costs incurred as a result of the offending property owner's failure to timely remit payment for the bill sent, including but not limited to reasonable attorney's fees This lien shall be further defined as to be a lien of a mechanic or a materialman pursuant to the Code of Alabama, 1975, Section 35-11-210, et seq.

Section 8. Correspondence. All notices required hereunder shall be addressed to the parties as follows:

TO THE PROPERTY OWNER:

At the residence address for such property owner

TO THE ARCHITECTURAL CONTROL COMMITTEE:

Architectural Control Committee  
c/o Agape Builders, LLC  
8033 Tea Garden Road SE  
Huntsville, AL 35802

All notices must be in writing and are deemed given ten (10) days after the same is deposited in the United States Mail, postage prepaid, and addressed as set out above.

### **Article IX** **Building Guidelines and Restrictions**

Section 1. General. This Article, beginning at Section 2, sets out certain building guidelines and restrictions that must be complied with by all Owners and Occupants.

Section 2. Carports and Garages. No carports shall be allowed without the approval of the Architectural Control Committee. All attached garages shall be either rear, side, or forty-five-degree angle entry and shall be for at least two automotive vehicles. Detached garages may be front facing, single garage doors not greater than twelve foot wide and not taller than ten feet.

Section 2. Exteriors. All houses shall have a brick, stone, masonry, or cement siding (Hardie) exterior. Painted brick coating systems must be approved by Architectural Control Committee. Shingles shall be architecturally dimensional. The majority of the roof system shall have a minimum pitch of 9/12. No building shall be allowed to stand with its exterior in an unfinished condition longer than six months after commencement of construction.

Section 3. Minimum Building Sizes. The floor area of the dwelling, exclusive of open porches, and garages shall be not less than 3000 square feet for a one-story dwelling, nor less than 2000 square feet for the ground floor of a two-story dwelling, and not less than a total of 3000 square feet for a two-story dwelling. In computing the minimum square footage, the basement area shall be excluded.

Section 4. Setback Lines. No building shall be located on any lot nearer to the front lot line than the Minimum Building Setback Lines as shown on the recorded plat. In no event shall any building on any lot be located nearer than 40 feet from the front lot line, nor nearer than 35 feet from

the rear lot line, nor nearer than 15 feet to the side lot line. For the purpose of this covenant, eaves, steps and open porches 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 a lot to encroach upon another lot.

## **Article X** **Mortgage Provisions**

The following provisions are for the benefit of holders of first Mortgages in Lots in the Community. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

Section 1. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage, who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Lot number), therefore becoming an “eligible holder”, will be entitled to timely written notice of:

(a) any condemnation loss or any casualty loss that affects a material portion of the Community or that affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such eligible holder;

(b) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by an Owner of a Lot of any obligation under the Declaration or By-Laws of the Association which is not cured within sixty (60) days;

(c) any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

(d) any proposed action that would require the consent of a specified percentage of Mortgage holders.

Section 2. Special FHLMC Provision. So long as required by the Federal Home Loan Mortgage Corporation (FHLMC), the following provisions apply in addition to and not in lieu of the foregoing. Unless two-thirds (2/3) of the first Mortgagees or Owners other than the Declarant, give their consent, the Association shall not:

(a) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Property that the Association owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Property shall not be deemed a transfer within the meaning of this subsection) other than personal property of the Association;

(b) change the method of determining the obligations, assessments, dues, or other charges that may be levied against an Owner;

(c) by act or omission, change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Lots and the Common Property (The issuance and amendment of architectural standards, procedures, rules and regulations of use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this subsection.);

(d) fail to maintain insurance, as required by this Declaration; or

(e) use hazard insurance proceeds for any Common Property losses for other than the repair, replacement, or restoration of such property.

Nothing contained in this Section shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration for any of the acts set out in this Section.

First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and that may or have become a charge against the Common Property and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

Section 3. No Priority. No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

Section 4. Notice to Association. Upon request, each Lot Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

Section 5. Amendments by Board. Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements that necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

Section 6. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request.

## **Article XI** **Easements**

Section 1. Easements for Encroachment and Overhang. There shall be reciprocal appurtenant easements for encroachment and overhang as between each Lot and such portion or portions of the Common Property adjacent thereto or as between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the term of this Declaration) to a distance of not more than five (5) feet, as measured from any point on the common boundary between each Lot and the adjacent portion of the Common Property or as between adjacent Lots, as the case may be, along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner, tenant, or the Association.

Section 2. Easements for Utilities. There is hereby reserved to the Declarant and the Association blanket easements upon, across, above and under all property within the Community for access, ingress, egress, installation, repairing, replacing, and maintaining all utilities serving the Community or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone and electricity, as well as storm drainage and any other service such as, but not limited to, a master-television antenna system, cable television system, or security system that the Declarant or the Association might decide to have installed to serve the Community. It shall be expressly permissible for the Declarant, the Association, or the designee of either, as the case may be, to install, repair, replace, and maintain or to authorize installation, repairing, replacing, and maintaining of such wires, conduits, cables and other equipment related to the providing of any such utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Board shall have the right to grant such easement.

Section 3. Easement for Entry. In addition to the right of the Board to exercise self-help as provided in Article XII, Section 2, hereof, the Board shall have the right, but shall not be obligated, to enter upon any property within the Community for emergency, security, and safety, which right may be exercised by the manager, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner, and the entering party shall be responsible for any damage caused. It is intended that this right of entry shall include the right of the Board to enter to cure any condition that may increase the possibility of a fire, slope erosion, or other hazard in the event an Owner or occupant fails or refuses to cure the Condition upon request by the Board.

Section 4. Easement for Maintenance. Declarant hereby expressly reserves a perpetual easement for the benefit of the Association across such portions of the Community, determined in the sole discretion of the Association, as are necessary to allow for the maintenance required under this Declaration. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment to Owner's property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense. The foregoing easement shall include the right to construct and install the entry features and planting berm. The Owner of any Lot

subject to this easement shall not alter, remove or add improvements to the easement areas without the prior consent of the Association.

In utilizing or accessing any easement retained by or for the benefit of the Declarant, Declarant and its agents or employees shall not be liable for any damage to any landscaping contained within the easement.

## **Article XII** **General Provisions**

Section 1. Enforcement. Each Owner and Occupant shall comply strictly with the By-Laws, the rules and regulations, the use restrictions, as they may be lawfully amended or modified from time to time, and with the covenants, conditions, and restrictions set forth in this Declaration and in the deed to his or her Lot, if any. The Board of Directors may impose fines or other sanctions, which shall be collected to comply with this Declaration the By-Laws or the rules and regulations shall be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the Board of Directors, on behalf of the Association, or, in a proper case, by an aggrieved Owner. Failure by the Association or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter. The Board shall have the right to record in the appropriate land records a notice of violation of the Declaration, By-Laws, rules and regulations, use restrictions, or design guidelines and to assess the cost of recording and removing such notice against the Owner who is responsible (or whose Occupants are responsible) for violating the foregoing.

Section 2. Self-Help. In addition to any other remedies provided for herein, the Association or its daily authorized agent shall have the power to enter upon a Lot or any portion of the Common Property to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates this Declaration, the By-Laws, the rules and regulations, or the use restrictions. Unless an emergency situation exists, the Board shall give the violating Lot Owner ten (10) days' written notice of its intent to exercise self-help. Notwithstanding the foregoing, vehicles may be towed after reasonable notice. All costs of self-help including reasonable attorney's fees actually incurred shall be assessed against the violating Lot Owner and shall be collected as provided for herein for the collection of assessments.

Section 3. Duration. The covenants and restrictions of this Declaration shall run with and bind the Community, and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors, and assigns, perpetually to the extent permitted by law; provided, however, should any provision of Alabama law now or hereafter limit the period during which covenants restricting lands to certain uses may run, any provision of this Declaration affected thereby shall run with and bind the land so long as permitted by such law, after which time any such provisions shall be automatically extended for successive periods of ten (10) years, unless such extension is disapproved by the affirmative vote or written consent, or any combination thereof, of at least two-thirds (2/3) of the total Association vote and the consent of Declarant (so long as the Declarant owns any Property subject to this Declaration). A written instrument reflecting disapproval must be recorded within the year immediately preceding the beginning of a ten (10) year renewal period. Every purchaser or grantee of any interest (including,

without limitation, a security interest) in any real property subject to this Declaration, by acceptance of a deed or other conveyance therefor, thereby agrees that such provisions of this Declaration may be extended and renewed as provided in this Section 3.

Section 4. Amendment. This Declaration may be amended unilaterally at any time and from time to time by Declarant:

(a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination that shall be in conflict therewith;

(b) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration;

(c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Lots subject to this Declaration; or

(d) if such amendment is necessary to enable any governmental agency or reputable private insurance company to insure Mortgage loans on the Lots subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Owner's Lot unless any such Lot Owner shall consent thereto in writing. Further, so long as Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Lot Owner hereunder, nor shall it adversely affect title to any Lot without the consent of the affected Lot Owner.

In addition to the above, this Declaration may be amended on the affirmative vote or written consent, or any combination thereof, of at least one-half (1/2) of the total Association vote and the consent of Declarant (so long as Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article IX hereof). Amendments to this Declaration shall become effective upon recording, unless a later effective date is specified therein. No provision of this Declaration that reserves or grants special rights to the Declarant shall be amended without the Declarant's prior written approval so long as the Declarant owns any property in the Community, or subject to annexation to the Community, primarily for development and/or sale.

Section 5. Partition. The Common Property shall remain undivided, and no Lot Owner nor any other Person shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners of all portions of the property located within the Community and without the written consent of all holders of all Mortgages encumbering any portion of the property, including, but not necessarily limited to, the Lots located within the Community.

Section 6. Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

Section 7. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of this Declaration are declared to be severable.

Section 8. Captions. The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Articles or Section to which they refer.

Section 9. Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

Section 10. Indemnification. The Association shall indemnify every officer and Director against any and all expenses, including attorney's fees, imposed upon or reasonably incurred by any officer or Director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer or Director. The officers and Directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and Directors 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 such officers or Directors may also be members of the Association), and the Association shall indemnify and forever hold each such officer and Director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or Director, or former officer or Director, may be entitled. The Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such coverage is reasonably available.

Section 11. Implied Rights. The Association may exercise any right or privilege given to it expressly by this Declaration, the By-Laws, the Articles of Incorporation, any use restriction or rule, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it therein or reasonably necessary to effectuate any such right or privilege.

Section 12. Variances. Notwithstanding anything to the contrary contained herein, the Board of Directors or its designee shall be authorized to grant individual variances from any of the provisions of this Declaration, the By-Laws and any rule, regulation or use restriction promulgated pursuant thereto if it determines that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the Community.

Section 13. Annexation of Additional Property. Declarant at its sole option, may annex additional real property to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the county in which the property to be annexed is located, a Supplementary Declaration describing the property being annexed. Any such Supplementary Declaration shall be effective upon the filing for record of such Supplementary Declaration, unless otherwise provided therein.

IN WITNESS WHEREOF, the undersigned, being the duly appointed officer of Declarant herein, has executed this instrument and affixed the corporate seal this \_\_\_\_ day of \_\_\_\_\_, 2022.

**AGAPE BUILDERS, LLC, an Alabama limited liability company**

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

STATE OF ALABAMA    )  
                                  :  
MADISON COUNTY    )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that \_\_\_\_\_, whose name as \_\_\_\_\_ of **AGAPE BUILDERS, 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 the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation on the day same bears date.

Given under my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

THIS INSTRUMENT WAS PREPARED BY: ROBERT E. RAWLINSON, ESQ., 4245 BALMORAL DRIVE SW, STE. 205, HUNTSVILLE, AL 35801 (256) 489-0725

**EXHIBIT “B”**  
**Definitions**

The following words, when used in this Declaration or in any Supplementary Declaration (unless the context shall prohibit), shall have the following meanings:

(a) “Association” shall mean THE SOVEREIGN POINT OWNERS ASSOCIATION, INC. a nonprofit Alabama corporation, its successors and assigns. The “Board of Directors” or “Board” of the Association shall be the appointed or elected body, as applicable, having its normal meaning under Alabama Corporate law.

(b) “By-Laws” shall refer to the By-Laws of THE SOVEREIGN POINT OWNERS ASSOCIATION, INC.

(c) “Community-Wide Standard” shall mean the standard of conduct, maintenance, or other activity generally prevailing in the Community. Such standard may be more specifically determined by the Board of Directors of the Association. Such determination, however, must be consistent with the Community-Wide Standard originally established by the Declarant.

(d) “Declarant”/“Developer” shall mean and refer to AGAPE BUILDERS, LLC, an Alabama limited liability company, and its successor in title and assigns, provided any such successor in title or assigns shall acquire for the purpose of development or sale all or any portion of the remaining undeveloped or unsold portions of the real property described in Exhibit “A”, attached hereto, and provided further, in the instrument of conveyance to any such successor in title or assign, such successor in title or assign is designated as the “Declarant” hereunder by the grantor of such conveyance, which grantor shall be the “Declarant” hereunder at the time of such conveyance; provided, further, upon such designation of such successor Declarant, all rights of the former Declarant in and to such status as “Declarant” hereunder shall cease.

(e) “Lot” shall mean any plot of land within the Community, whether or not improvements are constructed thereon, which constitutes or will constitute, after the construction of improvements, a single-family dwelling site as shown on a plat recorded or to be recorded in the land records of the county where the Community is located.

(f) “Majority” means those eligible votes, Owners, or other group as the context may indicate totaling more than fifty (50%) percent of the total eligible number.

(g) “Mortgage” means any mortgage, deed of trust, and any and all other similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of an obligation.

(h) “Mortgagee” shall mean the holder of a Mortgage.

(i) “Occupant” shall mean any Person occupying all or any portion of a residence or other property located within the Community for any period of time, regardless of whether such person is a tenant of the Owner of such property.

(j) “Owner” shall mean and refer to the record owner, whether one or more Persons, of the fee simple title to any Lot located within the Community, excluding, however, any Person holding such interest merely as security for the performance or satisfaction of any obligation.

(k) “Person” means any natural person, as well as a corporation, joint venture, partnership (general or limited), association, trust, or other legal entity.

(l) “Supplementary Declaration” means an amendment or supplement to this Declaration that subjects additional property to this Declaration or imposes, expressly or by reference, additional restrictions and obligations of the land described therein, or both.