

**DECLARATION  
OF  
COVENANTS, CONDITIONS, RESTRICTIONS,  
RESERVATIONS AND EASEMENTS  
FOR  
SOLAMERE SUBDIVISION PHASE 3**

**THIS DECLARATION** of Covenants, Conditions, Restrictions, Reservations and Easements (hereinafter referred to as the “Declaration”) is made and published by PEACH STATE LAND DEVELOPMENT, INC, a Georgia corporation duly authorized to do business as PSLD, Inc. under the laws of the State of Alabama (hereinafter referred to as the “Declarant”).

**WITNESSETH**

**WHEREAS**, Declarant is the owner of certain property situate in Lee County, Alabama, being known as **Solamere Subdivision Phase 3**, as shown on the map or plat thereof filed for record in Plat Book 29 at Page 2 in the Office of the Judge of Probate of Lee County, Alabama, as may be amended from time to time, which plat is incorporated herein by this reference, as well as other certain property located in Lee County, Alabama which is described as Lot 1, Peachy Subdivision, as shown on the map or plat of subdivision recorded in Plat Book 27 at Page 13 in the Office of the Judge of Probate of Lee County, Alabama, which the Declarant anticipates filing a Subdivision Plat which shall be entitled Solamere Subdivision Phase 2 (collectively being hereinafter sometimes referred to as the “Property”); and

**WHEREAS**, Declarant desires to create on the Property a planned community with residential housing on individual lots (hereinafter referred to as a “Lot” or “Lots”); and

**WHEREAS**, Declarant desires to provide for the preservation and enhancement of the property values, aesthetic qualities, amenities and opportunities in said community, and for the maintenance of the Property and improvements thereon, and to this end desires to subject the Property to the within covenants, conditions, restrictions, easements, charges and liens, each and all of which are for the benefit of said Property and each owner thereof; and

**WHEREAS**, Declarant and/or Association shall form a non-profit membership corporation to be known as **Solamere Homeowners Association, Inc.** (hereinafter referred to as the “Association”) to (i) manage, repair and maintain the Common Areas, as that term is defined in Section 1.04 below; (ii) enforce the covenants, conditions, restrictions, reservations and easements declared herein; and (iii) collect and disburse the assessments and charges hereinafter created, to the end of promoting the recreation, health, safety and welfare of the Lot Owners;

**NOW, THEREFORE**, in consideration of the premises, Declarant has and by these presents does hereby make, declare and publish the following protective covenants, conditions, restrictions, reservations and easements, all of which shall be covenants running with the Property, and the Property shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, reservations, easements, charges and liens hereinafter set forth.

## **ARTICLE I DEFINITIONS**

**Section 1.01** “Additional Property” shall mean and refer to any real property and any improvements situated thereon lying adjacent to or in close proximity with the Property, which may be submitted to the provisions of this Declaration.

**Section 1.02** “Association” shall mean and refer to **Solamere Homeowners Association, Inc.**, an Alabama non-profit membership corporation, its successors and assigns.

**Section 1.03** “Association Documents” shall refer to the Articles of Incorporation and Bylaws of the Association, as amended from time to time.

**Section 1.04** “Architectural Review Committee” or “ARC” shall mean Declarant or that Person or Persons designated by Declarant in writing; provided, however, after 90% of the homes are complete, the ARC shall consist of three (3) members who shall be elected annually by the Board of Directors at a Regular Meeting of such Board.

**Section 1.05** “Common Areas” shall mean the land area and physical improvements lying within those portions of the Property which are designated as Open Space/Parking and Open Space/Detention Area, or are otherwise not identified as a particular lot on the Plat, and those items otherwise conveyed by Declarant to the Association.

**Section 1.06** “Declarant” shall mean and refer to PEACH STATE LAND DEVELOPMENT, INC, a corporation duly organized to do business as PSLD, Inc. under the laws of the State of Alabama, its successors and assigns, or any of the following to which a recorded conveyance of Declarant’s rights hereunder has been made: (a) a purchaser from Declarant of a substantial interest in any remaining portion of the Property owned by Declarant; or (b) a corporation, partnership, association or other entity organized, established or purchased by, or which purchases, Declarant, pursuant to, but not limited to, any corporate acquisition, merger or business reorganization; or (c) the then members of the ARC.

**Section 1.07** “Declaration” shall mean the protective covenants, conditions, restrictions, reservations, easements, Bylaws and all other provisions set forth in this document, together with any supplemental declarations and amendments to this Declaration made in accordance with the provisions hereof.

**Section 1.08** “Solamere Protective Covenants” shall mean and refer to these Declaration of Covenants, Conditions, Restrictions, Reservations and Easements, as the same may have been and may be hereafter amended, from time to time, in accordance with its terms.

**Section 1.09** “Lot” shall mean and refer to the residential lots shown upon any recorded subdivision map of the Property, as defined herein and including any Additional Property which may be submitted to the terms hereof.

**Section 1.10** “Member” shall mean and refer to the record title owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Property, but excluding those having such interest under a Mortgage or other security instrument by means of which title to the Lot is conveyed or encumbered to secure a debt. “Member” means Lot Owner.

**Section 1.11** “Mortgage” shall mean and refer to any contractual security instrument by means of which fee simple title to a Lot is conveyed or encumbered to secure a debt, including, but not limited to, mortgages, security deeds, loan deeds and deeds to secure a debt.

**Section 1.12** “Mortgagee” shall mean and refer to the holder of record of a Mortgage, whether it be one or more Persons or entities.

**Section 1.13** “Person” shall mean and refer to an individual, corporation, partnership, association, trust or any other legal entity.

**Section 1.14** “Plat” shall mean that certain map or plat of Solamere Subdivision, Phase 3 recorded in Plat Book 29 at Page 2, all in the Office of the Judge of Probate of Lee County, Alabama, together with any plat establishing a subdivision of Additional Property.

**Section 1.15** “Property” shall mean and refer to the real property described on Exhibit A attached hereto and incorporated herein, together with Additional Property which may be made subject to this Declaration.

## **ARTICLE II MEMBERS AND PROPERTY RIGHTS**

**Section 2.01** **Membership.** Any person who has or acquires title to a Lot shall be a Member of the Association. Such Membership shall be automatically transferred upon the conveyance of any such Lot. Each Member shall abide by the Bylaws of the Association, as well as rules and regulations promulgated thereby.

**Section 2.02** **Voting Rights.** Each Member shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as the owners thereof determine, but in no event shall more than one vote be cast with respect to any Lot. Each owner, by acceptance of a deed or other conveyance to a Lot or Dwelling, consents and agrees to the dilution of his or her voting interest in the Association by virtue of the submission of any Additional Property to the terms of this Declaration.

**Section 2.03** **Members’ Easements of Enjoyment and Ingress/Egress.** Every Member shall have a right and easement of enjoyment, ingress/egress and maintenance in and to the Common Areas, which right shall be appurtenant to and shall pass with the title to every Lot. Such right and easement of enjoyment and maintenance shall include the right to the nonexclusive use by Members of the Association of such Common Areas.

**Section 2.04** **Extent of Members’ Easements.** The rights and easements of enjoyment, maintenance and ingress/egress created hereby shall be subject to the right of the Association to dedicate or transfer any part of the ownership, maintenance or use of the Common Areas (which are not a portion of a Member’s Lot) to any Person, entity, public agency, authority or utility for the use of such Person, entity, agency, authority or utility; provided, that any such dedication or transfer shall require approval by a majority of the Board of Directors. Provided, further that the rights and easements granted to Members by this Declaration shall be subject to any restrictions set forth herein or in the Association Documents.

**Section 2.05** **Delegation of Use.** Any Member may delegate his right of use to the Common Areas to the occupants of his Lot, and/or to such Member’s guests, invitees and licensees, subject to the other provisions of this Declaration and the Association Documents. The rights and privileges of such

occupants and/or such guests, invitees and licensees are subject to suspension to the same extent as those of the Member.

### **ARTICLE III ARCHITECTURAL CONTROL AND USE RESTRICTIONS**

#### **Section 3.01 Review of the Architectural Plans and Specifications by the Architectural Review Committee.**

(a) The ARC is hereby granted the authority to approve or disapprove the plans and specifications, including the location thereof, for any new building or structure to be erected upon any Lot.

(b) The ARC is hereby granted the authority to approve or disapprove the plans and specifications for construction of, additions to, changes in or alteration of any building or structure located on a Lot or the reconstruction of any such building or structure.

(c) Before any residence, garage, playhouse, out-building, greenhouse, fence, wall or other structure, or exterior addition to, change in or alteration of any such structure or reconstruction of such structure, shall be commenced, erected, altered or maintained upon any Lot, two sets of complete final building plans, site drawings and specifications, including description of materials and exterior colors, shall have been submitted to the ARC, of which one set will be stamped approved and returned to the lot owner.

(d) The purpose of this section, in providing the ARC with the authority to approve or disapprove plans and specifications for all buildings and structures constructed on the Lots, is to maintain the value of all Lots and to protect all Lot Owners against a diminution of value resulting from the construction of a residence or other structure incompatible with the proper development of the Property. Refusal of approval of any such plans and specifications shall be at the sole discretion of the ARC and shall be based upon the following factors:

- (1) Harmony of exterior style, materials and colors with the existing or proposed structures erected on the Lots of the Property;
- (2) General quality in comparison with the existing standards of structures erected on the Lots of the Property;
- (3) Location in relation to surrounding structures;
- (4) Aesthetic considerations.

(e) The ARC may specify, prior to construction, for any Lot, the location and manner of excavation, dirt and fill storage, digging, backfilling, etc., for utility trenches and house construction, the color and composition of roofing materials, the color and composition of bricks or siding and the style or architecture. Such standards may include, but not necessarily be limited to the following: off-site storage of fill, dirt or construction debris; stockpiling of fill from utility trenches; backfilling utility trenches and concrete walls; covering exposed concrete blocks used in the construction of any residence or other structure, with either brick or natural stone or other approved material; and the general appearance of the residence's walls, fences or other structures and the location of walks and drives. Such standards and requirements may vary from Lot to Lot and may be imposed by the ARC in its sole discretion so as to minimize disruption of trees, tree roots, existing ground cover, rock outcropping or other natural features,

and to ensure the aesthetic harmony of exterior design with existing structures located on the Property. Indiscriminate grading or trenching is strictly forbidden, as these may harm natural features which protect and enhance the beauty and privacy of the entire Property and to encourage the aesthetic standards of the neighborhood.

(f) During construction, no fill, dirt, sand, block, pipe or construction debris may be stored on or allowed to remain on any Lot for over sixty (60) days.

(g) The ARC shall act with all reasonable promptness upon receipt of plans and specifications submitted in accordance with this section to approve or disapprove such plans and specifications. If the ARC shall fail to approve or disapprove such plans and specifications within thirty (30) days after written demand for the approval of such plans and specifications has been received, then such plans and specifications shall be deemed approved, provided, however, that all other conditions and restrictions of this Article III shall not be deemed waived but shall remain in full force and effect.

(h) The ARC does not review architectural plans and specifications for compliance with any local, state or federal law, including, but not limited to, building codes and zoning ordinances, or for structural integrity.

(i) The ARC may fine Lot Owners for infractions of this Section 3.01, with such fine not to exceed fifty dollars (\$50.00) per infraction per day. Any such fines shall be promptly paid to the Association, and shall be used by the Association to replant suitable trees to replace those adversely affected by improper or inadequate protection during construction or take similar corrective measures.

### **Section 3.02 Construction of Residences and Other Structures.**

(a) There shall be a minimum area of total heated and cooled living space ("total living space" as defined herein to be an area exclusive of garages, porches, terraces, bulk storage areas, attics and basements) of Fifteen Hundred (1,500) square feet of the residences located on each Lot as set forth herein. The ARC reserves the right to require that residences located on larger lots include more square feet of living space.

(b) Unfinished concrete or concrete block shall not be exposed to view on any portion of the home.

(c) Previously constructed homes and/or modular homes shall not be permitted to be relocated to any lot.

(d) Above ground pools shall not be allowed on any lot.

(e) No temporary house, shack, tent, barn or other outbuilding shall be permitted on any Lot at any time with the exception of:

(1) Temporary buildings, trailers or mobile units used for construction purposes during the construction period of a residence on such Lot; or

(2) A temporary real estate sales office maintained by Declarant or Declarant's designated agent for the sale of Lots or homes.

(f) Detached buildings of a permanent nature may be placed on a Lot in the side or rear of the residence to be used for the following purposes:

- (1) A one (1) or two (2) story garage for two (2) automobiles with finished or unfinished space above;
- (2) A playhouse or other enclosed building for recreational purposes;
- (3) A greenhouse;
- (4) A doghouse, pursuant to subsection (f) of this Section 3.02; or
- (5) A storage building not to exceed one hundred (100) square feet.

The ARC shall have the right to approve or disapprove the location, and plans and specifications for any detached building to be erected on any Lot, and such building may not be erected until complete final plans and specifications for such detached building shall have been submitted to and approved by the ARC in accordance with the provisions of Section 3.01 hereof.

(g) The exterior of all residences and detached buildings shall be completed within nine (9) months after the construction of same shall have been commenced, except where such completion is impossible or would result in great hardship to the owner or builder due to strikes, fires, floods, lightning, earthquakes or other casualties. Notwithstanding the foregoing provision, the exterior of all residences and detached buildings shall be completed within one (1) year after the construction of such residence or detached building shall have been commenced.

(h) No Lot shall be used or maintained as a dumping ground or burial site for rubbish, construction debris, stumps, trees and similar matter, and containers for garbage or other refuse placed on any Lot shall be located only so as not to be visible from streets except for those times designated by governmental authorities when such containers are to be placed on said streets for collection. Such containers shall be underground or in screened sanitary enclosures, shall be closed at all times and shall be maintained under sanitary conditions. Incinerators for garbage, trash or other refuse shall not be permitted on any Lot, and the location of any garbage area must be approved in writing by the ARC.

(i) No stable, poultry house or yard, rabbit hut or other similar yard structure, with the exception of a doghouse (other than a doghouse constructed, used or maintained for breeding purposes), shall be constructed or allowed to remain on any Lot unless otherwise approved in writing by the ARC. Any structure to be used for the purpose of a doghouse shall be erected and located on a Lot in accordance with the provisions of subsection (c) of this section.

(j) Construction of model homes is expressly permitted, provided such structures conform to the restrictions and requirements of this Declaration.

(k) The installation of doors on all garage openings facing any street is required and the type, style and color of said door shall be approved by the ARC. Said garage doors shall be kept closed except when the doorway is in use.

(l) No radio transmission and/or receiving aerials, satellite dish antennas or television antennas (except one satellite dish antenna less than 18" in diameter may be installed on the exterior of a Lot, residence or detached building upon specific written approval of the ARC) may be installed on the exterior of any Lot, residence or detached building.

(m) The location and type of any fencing shall also be submitted to the ARC for approval. All fencing shall extend from the rear corner of the residence and no fencing shall be permitted on the front side of the residence. The ARC reserves the right to require that fencing or planting of greenery or both be placed around swimming pools.

(n) No alteration in the exterior appearance of any residence or detached building including, but not limited to, the paint color of any such residence, detached building or structure, or modification of the landscaping, shall be made without approval of the ARC.

(o) Should any residence or other structure on any portion of any Lot be destroyed in whole or in part, it must be reconstructed in accordance with the original plans and specifications approved by the ARC and any subsequently approved modifications thereto. The debris therefrom must be removed and the Lot restored to a neat and sightly condition as soon as practical but in no event later than the date which is two months after the date of such destruction.

(p) The provisions hereof shall be liberally construed to effectuate the purpose of creating a uniform plan of development and operation for the Property. Enforcement of these covenants and restrictions shall be by the Association or by any Member, Lot Owner or Mortgagee, and by any proceeding at law or in equity, against any Person or Persons violating or attempting to violate any covenant, restriction, reservation or easement, either to restrain or enjoin violation or to recover damages, or both, or against any Lot to enforce any lien created hereby; and the failure or forbearance by the Association, Member, Lot Owner or Mortgagee to enforce any covenant, restriction, reservation or easement herein contained shall in no event be deemed to constitute a waiver of the right to do so thereafter.

### **Section 3.03 Location of Buildings and Structures.**

(a) Building locations will be determined solely by the ARC with the following considerations: City of Auburn zoning requirements, location of building sites on adjoining Lots, utility easements, aesthetics, topography, trees and natural vegetation; and Owner preferences.

(b) Notwithstanding the provisions of subsection (a) of this Section 3.03, but subject to the provisions of Section 3.02 (j), privacy fences and/or walls may be constructed along the side and rear Lot lines of a Lot provided that:

- (1) Such fences and/or walls shall not be in violation of the provisions of subsection (c) of this Section 3.03 or of Section 3.01 hereof, and
- (2) The plans and specifications for the erection of such fences and/or walls have been submitted to and approved by the ARC pursuant to the provisions of Sections 3.01 and 3.02 hereof.

### **Section 3.04 Additional Requirements with Respect to Structures Maintained on Lots.**

(a) No outside clothesline shall be permitted on any Lot.

(b) No sign of any kind shall be erected or maintained on any Lot with the exception of a professionally lettered sign of a builder, realtor, owner or Declarant advertising such Lot or the residence of such Lot and Lot for sale; provided, however, that any such sign shall be in compliance with the following requirements:

- (1) No sign shall be more than twenty-four (24) inches by thirty (30) inches in size;
- (2) No more than two (2) signs shall be placed on any Lot at the same time;
- (3) Any and all signs shall be mounted and/or affixed in a single location separate from the residence and separate from any other structure, such as a garage, fence, retaining wall or shed located on the Lot; and
- (4) No sign shall be attached to any tree or shrubbery.

Notwithstanding the provisions of this Section 3.04, Declarant's right to use such signs as shall be reasonably necessary to promote the sale of Lots or homes in the Subdivision shall be permitted.

(c) Only one mailbox shall be located on any Lot and shall be standardized as to type, design, color and location as established by the ARC. Any existing mailbox in Phase I shall be permitted to remain; provided, however, that any replacement thereof shall comply with the terms hereof.

(d) No lumber, bricks, stones, concrete blocks, scaffolding, mechanical devices or any other materials or devices or construction debris used for building purposes shall be placed, stored or kept on any Lot, except during and when being used in construction.

(e) No exposed above-ground tanks for the storage of fuel, water or any other substance shall be located on any Lot.

(f) Adequate off-street parking shall be provided by the owner of each Lot for parking, and no Lot Owner shall park all or any vehicle on the streets within the Subdivision as a matter of course. Other vehicles, including, without limitation, motorcycles, campers, trailers, motor homes, boats, and recreational vehicles may be parked on any owner's Lot only if parked in screened areas as approved by the ARC, which screening shall conceal the vehicles from view from streets and from any other Lots.

(g) Parking of any vehicle whatsoever shall be discouraged on the roadways within the Property.

### **Section 3.05 Use of Lots.**

(a) Lot Owners, residents, guests and invitees shall refrain from any act or use of their Lot which could reasonably cause embarrassment, discomfort or annoyance to other Members, or interfere with the quiet enjoyment of the Lots by each of the other Lot Owners.

(b) No livestock, animals or poultry of any kind may be kept on any Lot, and no more than two (2) domestic pets, including cats, dogs and similar animals may be kept on any Lot without the consent of the ARC.

(c) The pursuit of hobbies or other activities including specifically, without limiting the generality of the foregoing, the assembly or disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly or unkempt conditions, shall not be pursued or undertaken on any Lot unless in screened areas as approved by the ARC, which screening shall conceal the hobbies or other activities from view from streets and from other Lots.

(d) No residence or detached building on any Lot shall be used other than as a single-family dwelling, and no portion of a residence or a detached building on any Lot may be used for a church,



school, community center, kindergarten or other similar use. No trailer, camper, structure of temporary character or tent on any Lot shall be used at any time as a residence either temporarily or permanently.

(e) No two (2), three (3) or four (4) wheel motorized recreational vehicles (excluding certain recreational vehicles designed and used for camping including, but not limited to, motor homes and boats) shall be operated or permitted on all or any portion of the Property.

(f) There shall be no planting or maintenance of crops or vegetables except for domestic purposes; all such crops and vegetables shall not be visible from any street or Lot.

(g) No trade or business of any kind may be conducted in or from a residence or any part of the Property, including business uses ancillary to a primary residential use, except that the Member or occupant residing in a residence may conduct such business activities within the residence so long as (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from the exterior of the residence; (ii) the business activity does not involve persons coming onto the Property who do not reside on the Property; (iii) the business activity conforms to all zoning requirements for the Property; and (iv) the business activity is consistent with the residential character of the Property and does not constitute a nuisance or a hazardous or offensive use, as may be determined in the sole discretion of the Association. The terms “business” and “trade”, as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider’s family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor. The leasing of a residence located on a Lot shall not be considered a business activity violative of this provision.

### **Section 3.06 Maintenance of Lots.**

(a) Before any residence may be occupied in the Subdivision, such residence shall be completely finished on the exterior, all yard areas which are visible from any street must be planted with grass or have other suitable ground cover, and driveways must be paved or surfaced in accordance with the plans approved by the ARC. In addition, the yard area of such Lot visible from any street shall be cleaned and all building materials and devices used for the construction of such residence shall be removed from such Lot pursuant to the provisions of Section 3.04(d) and 3.01(f) hereof, and the approved landscaping plan shall be implemented.

(b) No owner of any Lot shall maintain the grounds of such Lot, whether vacant or occupied, in other than a neat and attractive condition. No unclean, unsightly or unkempt conditions of buildings or grounds on any Lot shall be permitted where such conditions tend to decrease the aesthetic standards of the neighborhood.

(c) Upon the failure of any owner to maintain his Lot, whether vacant or occupied, in a neat and attractive condition, the ARC may, after ten (10) days written notice to such Lot Owner, enter upon such Lot and have the grass, weeds and other vegetation cut and the trees, shrubs and other plants removed therefrom when, and as often as, the same is necessary in the judgment of the ARC in order to maintain the aesthetic standards of the neighborhood. In the event that it is necessary to enter upon such Lot pursuant to this Section 3.06(c):

- (1) The owner of such Lot shall be personally liable to the Association for the cost of any cutting, clearing and maintenance described above;

- (2) Liability for the amount expended for such cutting, clearing and maintenance shall be a permanent charge and lien upon such Lot, enforceable on the same terms as the lien of assessments created by Article V hereof;
- (3) All costs incurred by the ARC shall be reasonable;
- (4) Entry by the ARC or its designee for the purpose of performing work required under this subsection shall only be between the hours of 7:00 a.m. and 6:00 p.m. E.T.; and
- (5) The owner of such Lot shall be personally liable to the Association for any injury sustained in the cutting, cleaning and maintenance described above.

(d) Unless located within ten (10) feet of a residence or detached building or within ten (10) feet of an approved site for such residence or building, no trees, shrubs, bushes or other vegetation having a trunk diameter of six (6) inches or more at a point two (2) feet above ground level located on any Lot shall be cut, destroyed or mutilated. This requirement may be waived only upon the express prior written permission of the ARC. Dead or diseased trees, shrubs, bushes or other vegetation shall be cut and removed promptly from any Lot by the owner thereof.

**Section 3.07 Governmental Regulations.** All governmental building codes, health regulations, zoning restrictions and other governmental regulations applicable to the Property shall be observed. In the event of any inconsistency between the provision of any such governmental code, regulation or restriction and any provision of this Declaration, the more restrictive provision shall apply.

**Section 3.08 Architectural Standards.** The architectural review standards set forth in this Declaration may vary over time and any such actions shall not constitute a waiver or stop future enforcement.

**Section 3.09 Compliance by Declarant.** Whenever a new building, structure, fence or other improvement is erected on any Lot by Declarant, such new building, structure, fence or other improvement shall be deemed to have been constructed and completed in compliance with this Article III. During construction on any Lot by Declarant, Declarant shall be deemed to be in compliance with this Article III.

#### **ARTICLE IV EASEMENT RESERVATIONS**

Declarant hereby reserves non-exclusive easements over, under and across each Lot for ingress and egress and for the evaluation of all architectural changes and the installation, repair, replacement, maintenance and use of sewers and utility facilities and distribution lines, including, without limitation, water, gas, electric and telephone distribution lines, storm and sanitary sewers, cable television lines, walls, signs, security systems, landscape and lighting easements within such areas, which such easements shall be in favor of the Declarant for the purposes of maintenance and improvements thereto. Declarant shall have the right at all reasonable times to enter upon such portion of each Lot in order to install, repair, replace or maintain any such sewers, facilities or distribution lines; provided, however, that (i) such rights shall be exercised in a reasonable manner so as to minimize interference with any such Lot; and (ii) during each such instance of such installation, repair, replacement or maintenance, all soil, paving and landscaping which is removed or disturbed shall be replaced and each Lot shall, as nearly as practicable, be restored to its condition prior to such installation, repair, replacement or maintenance. Declarant shall

have the right to assign the benefits of the foregoing easements to any electric company, gas company, telephone company or other public utility, or to the State of Alabama, or any subdivision or agency thereof, for the purpose of so installing, repairing, replacing, maintaining and operating such sewers, facilities or distribution lines.

Common areas designated as Open Space/Parking and Open Space/Retention Pond shall be maintained by Home Owners Association.

## **ARTICLE V COVENANT FOR MAINTENANCE ASSESSMENTS**

**Section 5.01 Creation of the Lien and Personal Obligation for Assessments.** Each owner of a Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree, to pay to the Association: (i) annual assessments or charges, and (ii) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge against and a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to successors in title unless expressly assumed by them.

**Section 5.02. Purpose of Assessments.** The assessments levied by the Association shall be used exclusively for the promotion of the recreation, health, safety and welfare of the residents in the Property, for the improvement, upkeep and maintenance of the Common Areas, of the Lots, of the existing street lights (including cost of lights, replacement costs and energy costs), of any signs, walls and/or fences constructed by Declarant and/or the Association and located on any Lot or Lots, for the performance by the Association of its obligations and responsibilities pursuant to this Declaration and the Bylaws and Articles of Incorporation of the Association.

**Section 5.03 Annual Assessment.** The initial annual assessment shall be \$350.00 per Lot; provided however, that the Declarant or the Board of Directors may increase the annual assessment to an amount not in excess of the maximum operating costs. Annual assessment shall be due in advance and shall payable in full not later than January 31<sup>st</sup> of each year. The prorated annual assessment shall be collected at closing on the purchase of any Lot in the Subdivision. The Declarant shall not be assessed annual or special assessments, except as to any Lot used for its personal residence. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner of a Lot subject thereto. The due dates shall be established by the Board of Directors of the Association. In the event that said Board of Directors fails for any reason to fix the annual assessment for any year, then until such time as an assessment shall have been determined, the assessment in effect for the previous year shall continue. In any year in which there is an excess of assessments and other income over expenditures, the Board of Directors, by resolution and without the necessity of a vote of the owners of the Lots, shall determine either to apply such excess or any portion thereof against and reduce the subsequent year's assessments or to allocate the same to one or more reserve accounts of the Association. The Association shall, upon demand, and for a reasonable charge, not to exceed the sum of \$10.00, furnish a certificate signed by an officer of the Association setting forth whether or not 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.

**Section 5.04 Special Assessments.** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose. Further, the Association may levy a special assessment against any Lot for the collection of any fine, charge or other amount payable by the owner of such Lot if the provisions of this Declaration permit or provide for the payment thereof by an owner.

**Section 5.05 Notice and Quorum for any Action Authorized Under Sections 5.03 and 5.04.** Written notice of any meeting called for the purpose of taking any action authorized under Section 5.03 or Section 5.04 of this Article V shall be sent to all Members not less than ten (10) days in advance of and not more than sixty (60) days in advance of any annual or regularly scheduled meeting. At the first meeting called, the presence of Members or of proxies entitled to cast at least sixty (60%) percent of all the votes of the Membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**Section 5.06 Uniform Rate of Assessment.** Both annual and special assessments must be fixed at a uniform rate for all Lots.

**Section 5.07 Effect of Nonpayment of Assessments: Remedies of the Association.** If any assessment or portion thereof is not paid within five (5) days after the due date, then the Board of Directors may assess a late charge, not in excess of ten (10%) percent of the amount of each assessment or installment thereof not paid when due, which shall also be due and payable to the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the lesser of the rate of ten (10%) percent per annum or the highest lawful rate. If any assessment or portion thereof is delinquent for a period of more than thirty (30) days, then if not paid within ten (10) days after written notice is given to the owner of such Lot to make such payment, the entire unpaid balance of the annual assessment for the year in question may be accelerated at the option of the Board of Directors and be declared due and payable in full. Such notice shall be sent in writing by certified mail, return receipt requested, to the owner both at the address of the Lot and at any other address or addresses the owner may have designated to the Association, specifying the amount of the assessments then due and payable, together with authorized late charges and interest accrued thereon. An action at law may be brought by the Association against the owner personally obligated to pay the same without foreclosing or waiving the lien securing the same, and each owner vests in the Board of Directors of the Association the right and power to bring all actions against him personally for the collection of such assessments as a debt and to foreclose the lien of such assessments. All payments on account shall be applied first to costs of collection, including without limitation reasonable attorney's fees, then to late charges, then to interest and then to the assessment lien first due, and all late charges and interest collected shall be credited to the funds of the Association. The Association shall evidence a lien for sums assessed pursuant to this Article V by preparing a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the owner of the Lot and a description of the Lot. Such notice shall be signed by an appropriate officer of the Association and may be recorded in the records of the county wherein the Property is located. No notice of lien shall be recorded until there is a delinquency in payment of an assessment. Such lien may be enforced by judicial foreclosure by the Association in the same manner in which security deeds or mortgages on real property may be foreclosed. In any such foreclosure, the owner shall be required to pay the costs and expenses of filing the notice of lien, the costs of foreclosure and reasonable attorney's fees, and all such costs and expenses shall be secured by

the lien being foreclosed. The owner shall also be required to pay to the Association any assessments against the Lot which shall become due during the period of foreclosure. The Association, or its designated representative, shall have the right and power to bid at the foreclosure sale or other legal sale and to acquire, hold, convey, lease, rent, encumber, use and otherwise deal with the Lot as the owner thereof. A release of notice of lien shall be executed by an appropriate officer of the Association and recorded in the public records of the county wherein the Property is located upon payment of all sums secured by a lien which has been made the subject of a recorded notice of lien. No owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Areas or abandonment of his Lot.

**Section 5.08 Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any ad valorem taxes, the lien of any first Mortgage covering the Lot, the lien of any mortgage recorded prior to the date of recording this Declaration, and the lien of any secondary Mortgage covering the Lot provided that neither grantee nor any successor grantee on the Mortgage is the seller of the Lot. All other persons acquiring liens or encumbrances on any Lot after this Declaration, which liens or encumbrances shall have been recorded in the records of the county wherein the Property is located, shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not such consent be specifically set forth in the instruments creating such liens or encumbrances. Sale or transfer of any Lot shall not affect the assessment lien; provided, however, that the sale or transfer of any Lot pursuant to foreclosure of a first Mortgage, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for assessments thereafter becoming due or from the lien thereof.

## **ARTICLE VI GENERAL PROVISIONS**

**Section 6.01 Enforcement.** Declarant, the Association, or any Member or any Mortgagee, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Each Lot Owner and occupant of a Lot shall comply strictly with the covenants, conditions and restrictions set forth in this Declaration, the Bylaws and the Articles of Incorporation of the Association and its published rules and regulations now or hereafter adopted, as the same may be lawfully amended from time to time, and with decisions of the Association made pursuant thereto. In the event of a violation or breach, or threatened violation or breach, of any of same, Declarant, the Association or, in a proper case, any aggrieved Member or Members, jointly and severally, and/or any Mortgagee shall have the right to proceed at law or in equity to compel compliance therewith or to prevent a threatened violation or breach thereof. Should Declarant or the Association employ legal counsel to enforce any of the foregoing or any other rights or remedies of Declarant or the Association, all costs incurred in such enforcement, including a reasonable fee for counsel if a final judgment is obtained by the Declarant or Association in any court of competent jurisdiction, shall be paid by the violating Lot Owner. Inasmuch as the enforcement of the provisions of this Declaration, the Bylaws and the Articles of Incorporation and such rules and regulations is essential for the protection of present and future Lot Owners, it is hereby declared that any breach thereof cannot be adequately compensated by recovery of damages, and that Declarant, the Association or, in any proper case, any aggrieved Member or Members and/or any Mortgagee, in addition to all other remedies, may require and shall be entitled to the remedy by injunction to restrain any such violation or breach or threatened violation or breach. Further, in addition to the foregoing remedies, the Association may, after failure of such Lot Owner to cure such violation within ten (10) days after written notice to such Lot Owner, (i) suspend temporarily the voting rights of a Lot Owner or the right of a Lot Owner or the occupants of such Lot Owner's Lot to use any recreational facilities or the Common Areas, and (ii) levy reasonable fines against a Lot Owner for such violation, provided that

each day or time a violation is continued or repeated after written notice is given to the Lot Owner to cease and desist, it shall be considered a separate violation. Collection of all fines assessed or levied pursuant to this Declaration may be enforced against a Lot Owner as if such charges were a common expense owed by the Lot Owner involved, and such charges may be added to and thereupon shall become part of that portion of any assessment next coming due to which the Lot Owner is subject. No delay, failure or omission on the part of Declarant, the Association, any Mortgagee or any aggrieved Member or Members in exercising any right, power or remedy herein provided shall be construed as an acquiescence thereto or shall be deemed a waiver of the right to do so thereafter as to the same violation or breach, or as to a violation or breach occurring prior or subsequent thereto, and shall not bar or affect its enforcement. No right or action shall accrue nor shall any action be brought or maintained by anyone whomsoever against Declarant or the Association for or on account of any failure to bring any action on account of any violation or breach, or threatened violation or breach, of the provisions and regulations, however long continued, or for the imposing of provisions which may be unenforceable.

**Section 6.02 Amendment.** For so long as Declarant owns any Lot within the Subdivision, Declarant may amend this Declaration by a written instrument filed and recorded in the Probate Office of Lee County, Alabama, without obtaining the approval of any Owner or Mortgagee; provided, however, that except as otherwise provided herein: (a) in the event any amendment proposed by Declarant materially and adversely alters or changes any owner=s rights to the use and enjoyment of his Lot or materially and adversely affects the title to any Lot or Dwelling, then such amendment shall be valid only upon the written consent thereto by fifty percent (50%) of all of the Owners (including Declarant who shall have the voting rights attributable to any Lots owned by Declarant); or (b) in the event any such proposed amendment by Declarant would materially and adversely affect the title and interest of any Mortgagee, such amendment shall be valid only upon the written consent thereto of all such Mortgagees affected thereby. In addition, this Declaration may be amended by written instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment made pursuant to this Section 6.02 shall be certified by Declarant or the Association, as may be the case, and shall be effective upon recording of the same in the Probate Office of Lee County, Alabama.

**Section 6.03 Additional Property.** Declarant reserves the right, in its sole discretion, at any time and from time to time to add Additional Property to the provision of this Declaration. At the time any Additional Property is specifically submitted to the terms and provisions of this Declaration, then such Additional Property shall constitute part of the Property. Submission of Additional Property need not be consented to or approved by any owner, occupant or mortgagee of any Lot. An amendment to this Declaration shall refer to this Declaration stating the book and page number of recordation in Office of the Judge of Probate of Lee County, Alabama, shall contain a description of the Additional Property, and shall state that said Additional Property is conveyed subject to the terms and conditions in this Declaration. The number of votes in the Association shall be increased by the number of Lots within the additional Property which are added and submitted to the Declaration and there shall continue to be one vote in the Association per Lot.

**Section 6.04 Severability.** If any provisions hereof shall be determined to be invalid or unenforceable, such determination shall not impair or affect the remainder of this Declaration, which shall remain in full force and effect.

**Section 6.05 Disclaimer of Responsibility for Security.** The Association shall not be responsible for security matters involving the Property or any Lot, and each Member, his guests and invitees shall be responsible for protecting his person and property.

**Section 6.06 Rights of Third Parties.** This Declaration shall be recorded for the benefit of the Members and their Mortgagees as herein provided, and by such recording no adjoining property

owner or third party shall have any right, title or interest whatsoever in the Property or in the operation or continuation thereof or in the enforcement of any of the provisions hereof, and, subject to the provisions hereof, the Members shall have the right to cancel, extend, modify, amend or otherwise change the provisions of this Declaration without the consent, permission or approval of any such adjoining owner or third party.

**Section 6.07 Interpretation.** In all cases the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of the Board of Directors of the Association, will best effect the intent of the general plan of the Property. The provisions hereof shall be liberally interpreted, and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or other entities or to individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

**Section 6.08 Captions.** The captions of each Article and section hereof as to the contents thereof are inserted only for convenience or reference and are in no way to be construed as defining, limiting, extending or otherwise modifying or adding to the particular Article and Section to which they refer.

**Section 6.09 Governing Law.** This Declaration shall be construed in accordance with and all disputes hereunder shall be governed by the laws of the State of Alabama.

**Section 6.10 Indemnity for Damages.** Each and every parcel owner and future Lot owner, in accepting a deed or contract for any Lot subject to this Declaration, agrees to indemnify Developer and the Association for any damage caused by such owner, of the contractor, agent, or employees of such owner, to roads, streets, gutters, walkways, or other aspects of public ways, including all surfacing thereon, or to water, drainage or storm sewer lines or sanitary sewer lines owned by Developer or the Association, or for which Developer or the Association has responsibility, at the time of such damage.

**Section 6.11 No Waiver** The failure of any party entitled to enforce any of this Declaration herein contained shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to such a violation of breach occurring prior to or subsequent thereto, provided, however, that approval of plans pursuant to this Declaration shall be binding on any and all parties as a conclusive determination that such plans are in conformity with this Declaration.

## **ARTICLE VII DURATION**

The covenants, conditions, restrictions, reservations and easements of this Declaration shall run with and be binding upon the Property and shall be and remain in effect, for a term of twenty (20) years from the date that this Declaration is recorded in the Office of the Judge of Probate of Lee County, Alabama, and shall inure to the benefit of and be enforceable by (1) the Declarant, (2) the owner of any Lot subject to this Declaration, his legal representatives, heirs, successors and assigns, (3) the Association or (4) any Mortgagee. After said twenty (20) year period, these covenants, conditions, restrictions, reservations and easements shall be automatically extended for successive periods of ten (10) years, unless on or before the date which is one (1) year prior to the expiration date, an instrument is signed by not less than two-thirds (2/3) of the then owners of the Lots agreeing to change or terminate said covenants, restrictions, reservations and easements in whole or in part and recorded in the Office of the Judge of Probate of Lee County, Alabama. Every purchaser or grantee of any interest in any property now or hereafter subject to this Declaration, by acceptance of a deed or other conveyance thereof, thereby

agrees to be subject to the covenants, conditions, restrictions, reservations and easements of this Declaration. Even if any covenants, conditions, restrictions, reservations and easements contained herein are terminated, the Association, the Common Areas, and the right to impose assessments, and the other matters not so terminated, shall remain in full force and effect.

**IN WITNESS WHEREOF**, the undersigned, being the Declarant herein, has hereunto set its hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

PEACH STATE LAND DEVELOPMENT

By: \_\_\_\_\_  
Roderick A. Wright  
President

By: \_\_\_\_\_  
Donald Brandenburg  
Secretary



STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

I, the undersigned authority, a Notary Public in and for said State at Large, hereby certify that Roderick A. Wright, whose name is signed to foregoing conveyance, and who is known to me, acknowledge before me on this day that, being informed of the contents of this conveyance, he executed the same voluntarily on the day the same bears date.

Given under my hand and seal of office, this the \_\_\_\_\_ day of \_\_\_\_\_, 2007.

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

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

I, the undersigned authority, a Notary Public in and for said State at Large, hereby certify that Donald Brandenburg, whose name is signed to foregoing conveyance, and who is known to me, acknowledge before me on this day that, being informed of the contents of this conveyance, he executed the same voluntarily on the day the same bears date.

Given under my hand and seal of office, this the \_\_\_\_\_ day of \_\_\_\_\_, 2007.

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