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Steven E. Blair, Probate Judge, Coffee County, AL

DECLARATION OF RESTRICTIVE COVENANTS FOR BIRCHWOOD SUBDIVISION

STATE OF ALABAMA
COFFEE OF COUNTY

PART A - PREAMBLE:

THIS DECLARATION, made on the date hereinafter set forth by Birchwood Land Development, LLC, for itself, its successors and/or assigns, hereinafter sometimes referred to collectively as "Declarant".

WITNESSETH:

Whereas, Declarant is the owner of all of the lots of Birchwood Subdivision, as recorded in Plat Book 4, Page 30, Office of the Judge of Probate, Enterprise, Coffee County, Alabama, hereinafter sometimes referred to as "subdivision" or "the properties"; and,

WHEREAS, Declarant for itself and its successors and/or assigns does hereby covenant and agree that the following restrictions and covenants shall apply to said subdivision;

NOW THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the subject properties and be binding on all parties having any rights, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

PART B - AREA OF APPLICATIONS:

B-1 Application: As designated herein, these covenants shall apply to all lots within the subdivision and as designated herein and relate to the subdivision in general.

PART C - COVENANTS:

C-1 Land Use and Building Type: No lot shall be used except for residential purposes unless otherwise approved by the architectural control committee or homeowner's association. No building shall be erected, altered, placed or permitted to remain on any lot other than one detached single family dwelling not to exceed two and one-half stories in height unless otherwise approved by the architectural control committee or homeowner's association. The type of construction of each dwelling/building/structure must be such that the quality of workmanship and materials which will compliment the pattern of the subdivision and must be approved by the Architectural Control Committee. Homes constructed with partial hardy plank and partial vinyl siding shall be allowed as long as the structure contains sufficient brick construction, stone construction or other approved construction materials. For structures other than main building also refer to C-2.

C-2 Architectural Control: No main building, storage building, cabana, swimming pool, fences, walls, TV satellite dishes, basketball goals, clotheslines, mailboxes or any other structure shall be erected, placed or altered on any lot in the subdivision until the plans, material specifications and plot plan showing the location and design of such buildings or structures have been expressly approved as to conformity and harmony of external design and location with existing structures in the subdivision and as to location of the buildings or other structures in respect to topography and finished ground elevation by the Architectural Control Committee.

C-3 Size and Quality: It is the intention and purpose of the covenants to assure that all dwellings shall be of a quality of workmanship and material substantially the same or better than that which can be produced on the date these covenants are recorded. The heated and cooled area of the main structure's first floor, exclusive of porches and garages shall be as follows: At least 1,800 square feet.

Recording Fee 47.00, TOTAL 47.00

C-4 Building Location: Building locations shall conform to the set-back and/or buffer lines as established on the recorded Plat of the subdivision and/or as further mandated by the rules and regulations of the City of Enterprise.

C-5 Easements: Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat of the subdivision and shall otherwise be granted as necessitated by any utility companies or public entities.

C-6 Nuisance: No noxious or offensive activities shall be carried on upon lot, nor shall anything be done thereon which may be or may become any annoyance of nuisance to the subdivision.

C-7 Temporary Buildings: No building materials or temporary buildings of any kind or character shall be placed or stored on the property until the owner is ready to commence improvements, and then such material or temporary building shall be placed within the property line of the lot or parcel of land upon which the improvements are to be erected and shall not be placed in the streets or between the street and the property lines; and any such temporary building or structure of any kind shall not be used for other than construction purposes; and expressly, such temporary structure or buildings shall not be used for residential or sales office purposes either during construction or thereafter, and shall be removed immediately upon completion of construction or within one year after such material or temporary building was placed thereon, whichever is sooner.

C-8 Signs: No sign of any kind shall be displayed to the public view on any lot except a professional sign of not more than one square foot, or one sign of not more than five square feet advertising the property for sale or rent, or one sign used by a builder and one sign used by a realtor to advertise the property during the construction and sale period.

C-9 Walls and Fencing: No fence or wall shall be erected or placed upon any lot unless the same shall be constructed of wood or masonry or equivalent and in no event shall any fence exceed the height of six (6) feet; and the design, construction and location of such fence or wall shall be expressly approved by the Architectural Control Committee. No fence of any type will be erected on the front of any lot.

C-10 Storage Buildings: No storage building shall be erected or placed upon any lot unless the same be constructed with the same kinds of materials and workmanship as used in the main dwelling unless otherwise approved by the Architectural Control Committee; and the design, construction, and location of such building shall be expressly approved by the Architectural Control Committee.

C-11 Satellite Dishes and Antennas: No towers, conductors, converters, satellite dishes, or other facilities or equipment for the reception of audio or video broadcasts directly from satellites or otherwise shall be maintained on any lot unless the same shall be located directly behind the main dwelling inside a privacy fence; and the design, construction, and location of such shall be approved in writing by the Architectural Control Committee. No antennae shall be erected or maintained on any lot without the prior written approval of the Architectural Control Committee.

C-12 Livestock and Poultry: No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred, or maintained for any commercial purpose.

C-13 Disposal of Refuse: No garbage, trash, ashes, refuse, inoperative vehicles (that have been inoperative for more than thirty days), or other waste shall be thrown, or dumped on any lot or street in the subdivision as permitted to remain upon any such place. All incinerators or other equipment for the storage of, or disposal of such material, shall be kept in a clean and sanitary condition.

C-14 Sight Distance at Intersection: No fence, wall, edge, or shrub planting which obstructs sight lines at elevations between two and six feet above the roadway section of a street property line with the edge of a driveway shall be permitted. No trees shall be permitted to remain within such distance of such intersection unless the foliage line is maintained at sufficient height to prevent obstruction of such lines.

C-15 Drying of Laundry: No structure or apparatus may be constructed for the outdoor drying of laundry or wash unless such structure or apparatus is enclosed in such a way so that it is not visible to the public or adjoining lot owners from a distance greater than twenty five feet.

C-16 Excavations: No excavations, except such as is necessary for the construction of improvements, shall be permitted.

C-17 House and Travel Trailers: Travel trailers shall not be used as a permanent residence while parked on any lot in the subdivision, nor used as a temporary or permanent residence while parked on any street in the subdivision, nor parked permanently on any street in the subdivision. Travel trailers that are or become unsightly, as determined by the Architectural Control Committee, must be hidden from view of the public, or adjoining lot owners. No house trailers shall be permitted to remain within the limits of this subdivision. No boat, boat trailer, house trailer, horse trailer, trailer camper, motor home or any similar items shall be stored on or at any lot for a period of time in excess of forty eight (48) hours, unless housed in a carport or garage or parked beyond the building set back line or otherwise screened so that it cannot be seen from adjacent and surrounding property.

C-18 Oil and Mining Operations: No oil drilling, oil development operations of any kind shall be permitted upon or in any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.

C-19 Recreation Vehicles: No all terrain vehicles, go-carts, dune buggies or similar vehicles shall be permitted to be stored or parked on any lot except in a carport or other permitted enclosure.

C-20 HVAC equipment: Outside air conditioning units may not be located in the front yard. All outside air conditioning units shall be hidden from view by shrubbery, or other foliage or fence that otherwise satisfies the requirements hereof. No wall or window air conditioning shall be permitted except with the prior written consent of the Architectural Control Committee.

C-21 Mailboxes: The Architectural Control Committee will be responsible for the design and location of a uniform mailbox to be placed and used within each residential neighborhood/lot. Unless separate approval is expressly provided by the Architectural Control Committee, all mailboxes will be of a lamp post style. Each lot owner agrees that shall be bound to purchase only a mailbox in conformity with those approved by the Architectural Control Committee. It is the lot owner's responsibility to check with the Architectural Control Committee regarding a proposed mailbox.

C-22 Parking on streets: There will be no parking in the street adjoining lots at any time with the exception of short term social events.

C-23 Utilities: The owner of a lot will not erect or grant to any person, firm or corporation the right, license, or privilege to erect or use or permit the use of overhead wires, poles, or overhead facilities of any kind for electrical or telephone service on said real estate without the prior written consent of the Architectural Control Committee. All electrical and telecommunication lines located upon any lot and property subject to this declaration shall be installed and maintained underground.

C-24 Maintenance. All structures, landscaping and other improvements upon individual lots shall be continuously

maintained by the owner thereof so as to preserve a well kept appearance, especially along the perimeters of any lot, including a vacant lot. Lots must be kept neat, clean, orderly, free of debris and litter, mowed, and/or trimmed. Landscaping, including grassing, planting of shrubs, trees, flowers and other aesthetic features may be set out separately by Declarant or homeowner's association so lot owners should inquire and it is their responsibility to do so. All such landscaping shall be completed within one (1) month from the completion of the main structure of any residence.

C-25 Accumulation of Refuse. No lumber, metals, bulk materials (except lumber, metals, bulk materials as is usual in the maintenance of a private residence and which must be stored in such a manner so that it cannot be seen from adjacent and surrounding property) refuse or trash shall be kept, stored, or allowed to accumulate on any part of the properties except building materials during the course of construction of any approved structure. Builders must provide dumpsters on the property during the construction period. If trash or other refuse is to be disposed of by being picked up and carried away on a regular and recurring basis, containers may be placed in the open, on any day that a pickup is to be made, at such place on the lot to provide access to persons making such pickup. Garbage containers shall be kept in a clean and sanitary condition and shall be so placed or screened by shrubbery or other appropriate material approved in writing by the Architectural Committee as not to be visible from any road or from adjacent and surrounding property. The Architectural Committee, in its discretion, may adopt and promulgate reasonable rules and regulations relating to the size, shape, color and type of containers permitted and the manner of storage of the same on any lot. No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted, except during the construction period, or except as specifically approved by the Architectural Committee.

C-26 Landscaping. No weeds, underbrush or other unsightly growth shall be permitted to grow or remain upon any part of a lot and no refuse pile or unsightly object shall be allowed to be placed or suffered to remain upon any part of a lot, including undeveloped lot. Owners will be required to keep undeveloped lots safe, neat, clean, orderly, free of debris and litter, mowed and/or trimmed within thirty (30) feet of the front line of said lot or parcel and thirty (30) feet of the side line of any corner lot or parcel. This provision shall not apply to the Declarant. Each owner shall install a suitable underground sprinkler system for their lot(s) as part of construction.

C-27 Detention Ponds. The Plat of the subdivision is incorporated herein by reference concerning the location of and maintenance obligations related to any detention pond which is used for storm drainage, whether such pond(s) is within this subdivision or within an adjoining phase, but the Association shall collect assessments for the maintenance/repair of the detention ponds which service the subdivision. It is anticipated that in the future Declarant will be deeding those ponds (and other common areas) to the Association and by accepting of a deed or other conveyance related to any lot, the owners acknowledge they have been so informed of said intention.

C-28 Water Supply. No individual water-supply system shall be permitted on any lot.

C-29 Drainage. All owners understand that water flows downhill and no lot owner can demand his neighbor of a higher elevation change the natural flow of water that was established before the time the lot owner took possession of the lot to accommodate the lot owner. In the same respect, no lot owner has the right to change the natural flow of water if it affects his neighbor without a written agreement with said neighbor.

C-30 Environmental Violations. All lot owners understand that once a person purchases a lot, the developer then relinquishes to the lot owner the responsibility for maintaining the environmental quality of their property and the lot owner will monitor and control activities which might be in violation of applicable environmental regulations as set forth by the Alabama Department of Environmental Management or other like governmental agencies and said responsibility could include fines and/or other penalties as a result of violations of the lot owner's property.

PART D - ARCHITECTURAL CONTROL COMMITTEE:

D-1 Membership: The Architectural Control Committee is established and is composed of the Declarant. Declarant shall have the right to designate one or more individuals to act on its behalf. At any time, Declarant shall have the authority to resign and to designate some other person(s), firm(s) or entity(ies) to act as the Architectural Control Committee.

D-2 Procedure: All requests for approval shall be submitted in writing to the committee prior to any construction. The Committee may require payment of a reasonable fee to review any submissions. The Committee shall timely review the submissions and contact the owner as to whether the submission is approved or denied.

PART E - GENERAL PROVISION:

E-1 Term of Restrictions: These covenants and restrictions are to run with the land, and shall be part of all deeds and contracts or conveyances of any and all lots in this subdivision and shall be binding on all parties and all persons claiming under them until November 16, 2048, at which time said covenants shall be automatically extended for additional successive periods of ten years unless by written and recorded agreement of a majority of the-then record owners as of July 15, 2048, or on each tenth year anniversary thereafter, is it determined that they shall no longer apply or shall be otherwise amended or modified.

E-2 Proceedings Against Violators: If any owner, tenant or occupant of this subdivision shall violate or attempt to violate any of these covenants and restrictions while in force and effect, it shall be lawful for any other person or persons having any ownership interest in any lot in the subdivision to prosecute any proceedings at law or in equity against any person violating or attempting to violate such covenants and restrictions and either to prevent them from doing so or to recover damages for such violations. In addition or alternatively thereto, the Homeowner's Association then in existence shall have the right to cause a lien to be placed against a lot owner's property for an assessment for violation of these covenants. In no event and under no circumstances shall a violator of any covenant or restriction herein contained work a forfeiture of reverter to title.

E-3 Invalidation of any Covenants: Invalidation of any of these covenants or restrictions by judgement or restrictions by judgement or court order shall in no way affect any other provision which shall remain in full force and effect.

E-4 Attorney Fees and Court Costs: If the party attempting to enforce these restrictions shall prevail in any proceeding at law or at equity, such party shall be entitled to recover reasonable attorney fees and court costs, which will be assessed against the party which is found to be in violation of such restrictions.

E-5 Abatement or Removal of Violations: Violations of any restrictions or covenant, shall give Declarant, or its duly designated representative, the right to enter upon the property where such violations exist and summarily abate or remove the same at the expense of the owner, including the right to file a lien against the property for any expenses, dues or fees owing and such entry and abatement, removal or filing a lien shall not be deemed as trespass or slander of title. Similarly, any homeowner's association organized shall have the same right.

E-6 Deed Restrictions: Declarant may make other restrictions applicable to each homesite by appropriate provision in the contract for deed or in any deed without otherwise modifying the general plan herein outlines, and such other restrictions shall inure to the benefit of other owners of homesites in the subdivision and shall bind the grantees and their respective heirs, successors, or transferees in the same manner as though they had been expressed herein.

E-7 Amendments: As long as Declarant owns at least one lot in the subdivision, it shall have the unilateral right to amend this Declaration of Covenants. Otherwise, it shall take the vote of at least seventy-five percent (75%)

of lot owners to amend these covenants but as long as Declarant owns at lease one lot in the subdivision, Declarant shall have veto power as to any such amendment.

PART F: ESTABLISHMENT OF OWNER'S ASSOCIATION; MEMBERSHIP AND VOTING RIGHTS

F-1 Declarant has caused or will cause to be organized a non-profit Owner's association known as Birchwood Homeowner's Association, Inc. (or some like-name) ("Association") to provide an effective means to obtain an adherence to these protective covenants and as a device for maintaining the character and long range value of this development. The Architectural Control Committee and/or Declarant may transfer some or all of its duties hereunder to such corporation.

F-2 Every owner of a lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

F-3 The Association has two classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to cast 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 they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B members shall be the Declarant and shall be entitled to cast the total number of votes of Class A members plus one. As to the lots in the subdivision, the Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) November 16, 2028, or

(b) when Declarant voluntarily ceases membership as a Class B member.

Until such time as Declarant's Class B membership shall cease, Declarant shall have the right to appoint the Board of Directors of the Association.

PART G- COVENANT FOR MAINTENANCE ASSESSMENTS

G-1 Creation of the Lien and Personal Obligation of Assessments. Each Lot owner hereby covenants to pay to the Association:

- (1) annual assessments or charges, and

-(2) 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 on the land and shall be a continuing lien upon the property 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(s) who was the Owner of such property at the time when the assessment fell due. The Association shall be expressly authorized to file a lien in the Office of the Judge of Probate, Coffee County, Enterprise, Alabama against a lot and owner for delinquent assessments, charges, fees and expenses.

G-2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and/or welfare of the residents in the subdivision and for the improvement and

maintenance of the common Areas, detention ponds and subdivision signs within the subdivision.

G-3 Maximum Annual Assessment. The annual assessment shall set by the Board of Directors. The maximum annual assessment may be increased each year not more than 5% above the maximum assessment as set by the Board by a vote of two-thirds (2/3) of members who are voting in person or by proxy, at a meeting duly called for this purpose.

G-4 Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association, through its Directors, may levy, in any assessment year, a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repairs or replacement of a capital improvement upon the Common Area or detention pond area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of a majority of the Board.

G-5 Date of commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following notice from the Board of Directors. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. 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 subject thereto. The due date shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an office of the Association setting forth whether the assessments on a specified Lot have been paid. A properly execute certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

G-6 Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 6 percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, and/or cause the lien against the property to be recorded at the Probate Office, Coffee County, Enterprise, Alabama. The Association, or any Owner, 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. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

G-7 Builders' and Declarant's Exemption: Declarant shall be exempt from paying any assessments, dues or expenses levied by the Association. Any Builder (meaning person or entity duly licensed as an Alabama homebuilder) who owns a lot and constructs a home on the same, shall be exempt such assessments, dues, fees and expenses for twelve months from the date they purchase a lot. After said time period, such dues, fees and expenses shall be owed.

PART H- OTHER PROVISIONS

H-1 Enforcement. The Association, or any Owner, 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. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

H-2 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

H-3 Common Areas. The Common Areas of the subdivision are considered to be the areas which are on the Plat of the subdivision but not platted as residential lots, including the detention pond areas. All such Common Areas and related improvements shall be maintained by the Association through the levy of assessments, dues and/or expenses.

Done this the 20th day of November, 2018.

Declarant- ~~Birchwood~~ Land Development, LLC

By: _____
Billy Cotter, Managing Member

By: _____
Norman Riley, Managing Member

STATE OF ALABAMA
COFFEE COUNTY

I, the undersigned authority in and for said County and State, hereby certify that Billy Cotter and Norman Riley, whose names as managing members of Birchwood Land Development, LLC are signed to the foregoing instrument, and who are known to me, acknowledged before me on this date, that being informed of the contents of said instrument they as such officials and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and seal this the 20th day of November, 2018.

Tamra M Bowdoin
Notary Public
My Commission Expires: My Commission Expires February 12, 2019