

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
COBBLESTONE SUBDIVISION**

KNOW ALL MEN BY THESE PRESENTS, that:

WHEREAS, T & T PROPERTIES, L.L.C., (hereinafter referred to as the "Developer"), is the owner and developer of certain property namely, COBBLESTONE SUBDIVISION, (hereinafter referred to as "Property") located in Auburn, Lee County, Alabama;

WHEREAS, the Developer desires to impose upon said property and each Lot located in said Development mutual and beneficial covenants, conditions, restrictions, agreements, easements, charges, liens and regulations for the benefit of all Lots on the Property and the future Owners of said Lots and Dwellings;

NOW THEREFORE, T & T PROPERTIES, L.L.C., does hereby proclaim, publish and declare that all of said Property, any part thereof, and each Lot and Dwelling are subject to, held and shall be held, owned, sold, conveyed, transferred, hypothecated, leased, rented, used, occupied, built upon, improved and otherwise used, improved, and maintained subject to the terms of this Declaration which covenants, conditions, restrictions, agreements, easements, charges, liens and regulations shall run with the title to the Property and shall be binding upon and inure to the benefit of Developer and upon all Owners and Occupants of the Property and any Lot and Dwelling.

**ARTICLE I  
DEFINITIONS**

The following definitions shall apply to this Declaration as well as the Articles of Incorporation and By-laws of Cobblestone Owners Associations, Inc.

**SECTION 1.1 Additional Property.** The term "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 Developer may from time to time submit and add to the provisions of this Declaration.

**SECTION 1.2 Architectural Control Committee.** The term "Architectural Control Committee" or "ACC" shall mean and refer to the architectural control committee appointed pursuant to Article III hereof with the rights and obligations conferred upon such architectural control committee pursuant to this Declaration.

**SECTION 1.3 Architectural Standards.** The term "Architectural Standards" shall mean the standards prepared, issued and amended from time to time by the Architectural Control Committee for the purpose of reviewing and approving all exterior improvements, living space, landscaping, and any other improvements which may be made to any Lot or Dwelling.

**SECTION 1.4 Articles of Incorporation.** The term "Articles of Incorporation" or "Articles" shall mean and refer to the Articles of Incorporation of the Association.

**SECTION 1.5 Assessment.** The term "Assessment" shall mean the annual and special assessments and any other charges assessed against any Owner by the Association.

**SECTION 1.6 Association.** The term "Association" shall mean Cobblestone Owners Association, Inc., an Alabama non-profit corporation.

**SECTION 1.7 Board.** The term "Board" shall mean and refer to the Board of Directors of the Association and their duly elected successors as provided in the Articles of Incorporation and Bylaws.

**SECTION 1.8 Bylaws.** The term "Bylaws" shall mean and refer to the bylaws of the Association, as the same may be amended from time to time.

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**SECTION 1.9 Declaration.** The term "Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions, Cobblestone Subdivision, and all amendments thereto.

**SECTION 1.10 Developer.** The term "Developer" shall mean and refer to T & T Properties, L.L.C., its heirs and assigns.

**SECTION 1.11 Development.** The term "Development" shall mean and refer to the Property and all Improvements thereon and any of the Additional Property submitted to the provisions of this Declaration.

**SECTION 1.12 Dwelling.** The term "Dwelling" shall mean and refer to any improved Lot.

**SECTION 1.13 Improvement.** The term "Improvement" shall mean and refer to all Dwellings, any building, structure, or device constructed, erected or placed upon any Lot which in any way affects the exterior appearance of any Lot or Dwelling. Improvements shall include, but is not limited to, buildings, sheds, foundations, covered patios, underground utilities, roads, driveways, walkways, paving, curbing, parking areas, trees shrubbery, landscaping, fences, screening, walls, signs, and any other artificial or man-made changes or alterations to the natural condition of any Lot or Dwelling. Improvements shall also mean any grading, any excavation, or fill, the volume of which exceeds eight (8) cubic yards.

**SECTION 1.14 Living Space.** The term "Living Space" shall mean and refer to the enclosed and covered areas within a Dwelling which are heated and cooled by heating, ventilating, and air conditioning equipment, exclusive of garages, carports, terraces, balconies, decks, patios, courtyards, greenhouses, atriums, bulk storage areas, attics, and basements.

**SECTION 1.15 Lot.** The term "Lot" shall mean and refer to any unimproved portion of the Property upon which it is intended that a Dwelling be constructed thereon. Upon recordation of a subdivision plat for any portion of the Property, each lot indicated thereon shall be deemed a Lot for the purposes of this Declaration. A parcel of land that is unimproved shall be deemed a Lot rather than a Dwelling for the purpose of this Declaration until the Improvements constructed there are sufficiently complete to reasonably allow habitation in the Dwelling. Upon completion, the Lot and Improvements thereon shall be considered a Dwelling for the purpose of this Declaration.

**SECTION 1.16 Mortgage.** The term "Mortgage" with an initial capital letter shall mean and refer to any mortgage, deed of trust, or other security instrument encumbering a Lot or Dwelling which has been duly filed for record in the land records of Lee County, Alabama.

**SECTION 1.17 Mortgagee.** The term "Mortgagee" shall mean and refer to the holder of any Mortgage.

**SECTION 1.18 Occupant.** The term "Occupant" shall mean any Owner, the family members, guests, tenants, agents, servants, employees, and invitees of any Owner and their respective family members, guests tenants, agents, servants, employees, and invitees and any other persons who occupies or uses any Dwelling within the Development. All actions or omissions of any Occupant is and shall be deemed the action or omission of the Owner of such Dwelling.

**SECTION 1.19 Owner.** The term "Owner" shall mean and refer to the record owner, including Developer, of fee simple title to any Lot or Dwelling. An Owner shall not include any Mortgagee unless and until it has foreclosed on its Mortgage and purchased said Lot or Dwelling at foreclosure sale and title to such encumbered Lot is vested in Mortgagee pursuant to a duly recorded deed. An Owner shall not include any lessee, purchaser, contract purchaser, or vendor who has an interest in any Lot or Dwelling solely by virtue of a lease, contract, or other agreement.

**SECTION 1.20 Property.** The term "Property" shall mean and refer to that certain real property situated in Lee County, Alabama which is more particularly described on Exhibit "A" attached hereto and incorporated herein by reference. The Property shall also include any Additional Property made subject to this Declaration.

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**ARTICLE II  
MUTUALITY OF BENEFIT AND OBLIGATION**

**SECTION 2.1 Restrictions and Agreements.** The covenants, conditions, restrictions, agreements, easements, charges, liens and regulations set forth in this Declaration are made for the mutual and reciprocal benefit of each Lot and Dwelling and are intended to create mutual, equitable servitudes upon and in favor of each Lot and Dwelling; and to create reciprocal rights and obligations between respective Owners and subsequent Owners of any Lot or Dwelling within the Development; and to create a privity of contract and estate between the Owners, their heirs, legal representatives, successors and assigns.

**SECTION 2.2 Additional Property.** Developer reserves the right, in its sole discretion, at any time and from time to time to add Additional Property to the provisions 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 or Dwelling. An amendment to this Declaration shall refer to this Declaration stating the book and page number of recordation in the land records of Lee County, Alabama, where this Declaration is filed for record and 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 or Dwellings 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 or Dwelling within the Development.

In no event shall Developer be obligated to submit any Additional Property to the provisions of this Declaration situated adjacent to or in close proximity with the Development. Notwithstanding anything provided in this Declaration to the contrary, the provisions in this article may not be modified, rescinded, supplemented or amended, in whole or part, without prior written consent of Developer, its successors or assigns.

**SECTION 2.3 Development of Property.** Developer shall have the right, but not the obligation, for so long as Developer owns any Lot or Dwelling, to make changes and improvements to all Lots or Dwellings owned by Developer.

**SECTION 2.4 Subdivision Plat.** Developer reserves the right to modify, amend, revise or otherwise add to, at any time and from time to time, a subdivision plat setting forth such information as Developer deems necessary with regard to the Development. Submission of a subdivision plat need not be consented to or approved by any Owner, Occupant or Mortgagee of any Lot or Dwelling, or by any Board or Committee.

**SECTION 2.5 Reservation of Maintenance Easement.** Developer does hereby establish and reserve for the Association, its agents, employees, heirs, successors and assigns a permanent and perpetual right and easement to enter upon any Lot or Dwelling for the purpose of mowing, clearing, cutting, pruning underbrush, weeds, stumps or other unsightly growth and removing trash so as to maintain reasonable standards of health, fire, safety and appearance within the Development. Said easement shall not impose any duty or obligation upon Developer or the Association to perform any of the foregoing actions.

**SECTION 2.6 Reservation of Environmental Easement.** Developer does hereby establish and reserve for the Association and the ACC, its agents, employees, heirs, successors and assigns a permanent and perpetual right and easement on, over, across, and upon all Lots and all unimproved portions of any Lot or Dwelling for the purpose of taking any action necessary to effect compliance with the Architectural Standards, or any watershed, soil erosion, or environmental rules, regulations, or procedures instituted by any governmental authorities or the Board. Except in the case of emergency situations, the exercise by Developer, the Association or the ACC of the rights reserved in this section shall not unreasonably interfere with the use or occupancy of any Dwelling situated on any Lot.

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**ARTICLE III  
ARCHITECTURAL CONTROL COMMITTEE AND  
REQUIREMENTS OF CONSTRUCTION**

**SECTION 3.1 Concept.** It is intended that the Development will be a residential community of high esteem and of first class quality in homes in a neighborhood environment.

In order to preserve the architectural and aesthetic appearance and the natural setting and beauty of the Development, to establish and preserve a harmonious design for the Development and to protect and promote the value of the Property, the Lots, the Dwellings, and all improvements thereon, no improvements shall be commenced, constructed, erected, installed, placed, moved on, altered, replaced, relocated, permitted to remain on or maintained on any Lot or Dwelling by any Owner, other than Developer, which affects the exterior appearance of any Lot or Dwelling unless plans and specifications have been submitted to and approved by the ACC.

**SECTION 3.2 Architectural Control Committee.** The ACC shall be composed of not less than three (3) members at all times. For so long as Developer is the Owner of any Lot or Dwelling within the Development, Developer shall have the sole and exclusive right to appoint and remove all of the members of the ACC. At such time as Developer is no longer the Owner of any lot or Dwelling within the Development, or upon Developer's written notice to the Association that it no longer desires to exercise the right to appoint and remove members of the ACC, then the members of the ACC shall be appointed by the Board of the Association.

**3.2.1** Any member of the ACC may be removed, with or without cause, by the Developer, until it gives written notice that it no longer desires to exercise the right to appoint and remove members of the ACC; or by the Board, after Developer gives written notice that it no longer desires to exercise this right.

**3.2.2** In the event of death or resignation of a member of the ACC, a new member may be appointed by the Developer or if Developer has waived this right then the Board shall make the appointment after Developer gives written notice that it no longer desires to exercise this right.

**3.2.3** A duly recorded, written instrument shall be filed with the Judge of Probate of Lee County, Alabama to change the membership of the ACC or to withdraw from the ACC or to restore it to any of its powers and duties. Neither the members of the ACC, nor its designated representatives, shall be entitled to any compensation for services performed pursuant to this covenant. A majority of the ACC may designate one or more representatives to act for it.

**3.2.4** The primary duty of the ACC shall be to examine and approve or disapprove all plans, including site plans, for construction of improvements on Lots within the Development in accordance with the provisions of this Declaration. The ACC shall have such other responsibilities, duties and authority as provided for herein.

**3.2.5** The ACC is hereby authorized to amend or modify from time to time any Architectural Standard, policies, guidelines, and requirements with respect to the construction, location, design, and landscaping of any Dwelling and any other improvements on any lot as it deems necessary and the same shall be binding upon and enforceable against all Owners.

**SECTION 3.3 Plan Approval.** All plans and specifications for any structure or improvement whatsoever to be erected upon or moved upon any Lot by anyone other than Developer and the proposed location thereon on any Lot or Lots, the construction material, color scheme, roofs, later changes or additions after initial approval thereof, and any exterior remodeling, reconstruction, repainting, alterations or additions after initial approval on any Lot, shall be subject to and shall require approval in writing of the ACC before any work is commenced. Construction may not be started before receipt of a letter of approval by the ACC, a copy of which must be signed by the Builder, or Owner, and returned to the ACC for retention.

**SECTION 3.4 Review Documents.** One set of prints of the drawings and specifications (hereinafter referred to as "plans") for each Dwelling or any improvements to any lot proposed to be

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constructed on each Lot shall be submitted for review or approval by the ACC. The plans submitted to the ACC shall be retained by the ACC. Said plans should be delivered to the chairman or any of the members of the ACC at least thirty (30) days prior to commencement of construction. Each such plan must include the following:

3.4.1 All plans for structures shall be not less than 1/8 inch equals 1 foot scale.

3.4.2 All plans must take into consideration the particular topographic and vegetative characteristics of the Lot or Lots involved.

3.4.3 All plans must state the elevations of all sides of the proposed structure as such sides shall exist after finished grading has been accomplished.

3.4.4 The foundation and floor plan(s) shall show the existing grade on each elevation in order that the extent of cut and/or fill areas may be easily and clearly determined.

3.4.5 The site plan shall show all outlines, setbacks, drives, fences, and underground trench locations as a scale of one inch equals twenty (20) feet.

3.4.6 All plans must include a specifications list of proposed materials, color scheme, and samples of exterior materials which cannot be adequately described and of materials with which the Committee is unfamiliar.

#### SECTION 3.5 Design Criteria, Structure.

3.5.1 It is the intent of this Developer of the Property to maintain as many natural surfaces and textures as possible. The following exterior materials are acceptable:

- (a) Brick, stucco, other materials as approved by the ACC.
- (b) Wood shakes or composition shingles.

3.5.2 Each plan for each Lot shall provide off-street parking for at least two (2) motor vehicles.

3.5.3 No window air conditioner shall be installed on the front of any structure.

3.5.4 Underground services to the individual homes for electrical distribution is the intent of the Developer and no overhead electrical wiring shall be installed without prior approval by the ACC.

3.5.5 Swimming pools will be permitted provided said pool meets all requirements of the applicable codes of the City of Auburn, Alabama. However, fencing of swimming pool areas must be within achieved set-back lines, and fence type and site location must be approved by the ACC.

3.5.8 All building debris, stumps, trees, etc., must be removed from each Lot by builder as often as necessary to keep the Dwelling and Lot attractive. Such debris shall not be dumped in any area of the Property.

3.5.9 During construction, builder must keep homes and garages clean and yards mowed, trimmed and groomed.

3.5.10 All Lots shall be landscaped by builder in accordance with the plans and specifications submitted to the ACC.

3.5.11 Drainage of surface water, storm water, and/or foundation drains may not be connected to sanitary sewers, septic tanks, or field lines.

3.5.12 No outside clothes lines shall be permitted without the ACC's approval.

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3.5.13 No exterior above ground liquified fuel storage containers in excess of ten (10) gallons of any kind shall be permitted.

3.5.14 No Lot corner stakes may be removed and in the event that such are removed or destroyed either during construction of a Dwelling or at any other time, it shall be the responsibility of the Owner of the Lot to have such restored by a licensed surveyor at the Owner's expense. The failure of an Owner to restore or replace such Lot stakes in accordance with the final subdivision plat, shall result in the ACC having such work performed and charged the expense thereof to the Owner.

3.5.15 Dust abatement and erosion control measures shall be implemented by the contractor or Owner in all stages of construction. Proper erosion plans shall be submitted to the ACC for approval prior to the construction phase beginning. These plans shall set out in detail the plan and the builder or subcontractor that will be responsible for the implementation of the plan.

3.5.16 The ACC shall have the right to disapprove any builders or contractors prior to beginning of construction.

3.5.17 Exterior concrete block walls must be covered with appropriate material as approved by the ACC.

3.5.18 No plumbing or heating vent shall be placed on the front side of roofs of residences.

3.5.19 Reflective glass with reflection coefficients high enough to result in a mirror appearance is not allowed on buildings surfaces facing the street.

**SECTION 3.6 Plans or Specifications Defects.** Neither the ACC nor any architect nor agent thereof shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with foregoing provisions, nor for any structural or other defects in any work done according to such plans and specifications.

#### **SECTION 3.7 Outdoor Furniture, Recreational Facilities.**

3.7.1 Outdoor furniture of a permanent nature and all recreational appliances, devices and/or structures shall be located at the rear of the Dwelling located on the Lot.

3.7.2 Wood piles shall be located only at the rear of a Dwelling and shall be screened by appropriate landscaping from view from streets and, to the extent practicable, from adjacent Lots.

### **ARTICLE IV**

#### **EXCLUSIVE RESIDENTIAL USE AND IMPROVEMENTS**

**SECTION 4.1 Residential Lots.** All Lots in the Development shall be known and described as residential lots and shall be exclusively for residential purposes exclusively only, and no Lot shall be subdivided without the approval of the Developer.

**SECTION 4.2 Detached Residence.** No structure, except as otherwise provided, shall be erected, altered, placed or permitted to remain on any residential building Lot other than one detached residence not to exceed three (3) stories. Barns will be allowed, but placement and plans are to be approved by the Developer.

**SECTION 4.3 Heated Square Footage and Ceiling Height.** Every Dwelling on any Lot, exclusive of one story open porches, garages, and carports, shall each have not less than the minimum of square footage of heated, habitable areas as described below:

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- (a) Single story Dwelling must have at least 1,100 square feet of heated, habitable space.
- (b) Two story Dwelling must have at least 700 square feet of heated, habitable space on main floor and 400 square feet of heated, habitable space on the upper story.
- (c) Enclosed, heated areas must have a ceiling height of at least eight (8) feet.
- (d) All Improvements must be built on site by a licensed contractor. No Dwelling or other Improvements shall be constructed, in whole or in part, of prefabricated structural components, excluding roof trusses and floor joists. No mobile homes, log homes, modular homes or "kit" homes shall be constructed, placed or assembled on any Lot.

**SECTION 4.4 Occupants of Dwellings.** Each Lot and Dwelling shall be used for residential purposes only. No dwelling may be occupied by no more than two persons not related by blood or marriage.

**ARTICLE V  
GENERAL PROHIBITIONS AND REQUIREMENTS**

**SECTION 5.1 Conditions of Buildings or Grounds.** It shall be the responsibility of each Owner to prevent any unclean, unsightly or unkempt conditions of Dwellings, Lots or Improvements on such Lot which shall tend to decrease the beauty in the specific area or of the Development as a whole.

**SECTION 5.4 Noxious, Offensive or Illegal Activities.** No noxious, offensive or illegal activities shall be carried on upon any Lot nor shall anything be done on any Lot which may be or may become an annoyance or nuisance to the Owners of Lots in the Development. No firearm, hunting device or weapon of any type shall be discharged in the Development.

**SECTION 5.5 Drilling, Refining, or Quarrying Operations.** No oil, natural gas drilling, refining, quarrying or mining operations of any kind shall be permitted upon any Lot; nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted on any Lot. No water pipe shall be installed or maintained on any Lot above the surface of the ground except temporary watering hoses used for irrigation purposes.

**SECTION 5.6 Trash, Garbage and Refuse.** No trash, garbage or other refuse shall be dumped, stored or accumulated on any Lot. Trash, garbage or other waste shall not be kept on any Lot except in sanitary containers or garbage compactor units. Garbage containers, if any, shall be kept in clean and sanitary condition and shall be so placed, buried or screened by shrubbery or other appropriate material approved in writing by the Developer or ACC so as not to be visible from any street within sight distance of the Lot at any time except during periods of refuse collection. No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted except during the construction phase without prior approval of the City of Auburn.

**SECTION 5.7 Temporary Units and Unfinished Residences.** No Improvement of a temporary character, including, but not by way of limitation, a mobile home, recreational vehicle, trailer, basement, tent or shack shall be used at any time as a residence either temporarily or permanently. There shall be no occupancy of any Dwelling until the interior and exterior of the Dwelling are completed and a certificate of occupancy is received by the Owner or contractor from the building official of the municipality where the property is located.

**SECTION 5.8 Destroyed Structures.** Any Dwelling or other Improvements on any Lot in the Development which may be destroyed in whole or in part for any reason must be rebuilt in one (1) year. All debris must be removed and the Lot restored to a sightly condition with reasonable promptness, provided that in no event shall debris remain on any Lot longer than sixty (60) days.

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**SECTION 5.9 Parking.** No house trailer, mobile home, camper, motor home, recreational vehicle, inoperable vehicle, antique vehicle, trailer, or similar equipment or vehicle shall be parked or stored on any road, street, driveway, yard or Lot located in the Development for any period of time in excess of twenty-four (24) hours, except in enclosed garages, except with the approval of the Developer. No trucks larger than one (1) ton pickups (GVW) and no tractors or other excavating machinery shall be parked or stored on any road, street, driveway, yard or Lot located in the Development for any period of time in excess of twenty-four (24) hours, except during the period of construction on the Lot.

**SECTION 5.10 Non-Residential Activities.** No retail or commercial sales, home industry, religion, school, kindergarten or educational enterprises shall be conducted on any Lot. Professional services and business conducted wholly within the confines of the Dwelling by the Owner or Occupants of the Dwelling and generating limited outside traffic may be permitted with the written approval of the Developer. No Owner or Occupant of any Dwelling erected on any Lot shall ever rent or lease rooms, but such shall not be construed to prevent the rental of an entire residence to a family nor the employment of live-in domestic servants.

**SECTION 5.11 Set-Back Lines Control.** No building shall be located nearer to the street than as permitted by applicable city ordinance. For the purposes of this paragraph, eaves, steps, and open porches not covered by a roof structure shall not be considered as part of a building, provided however, that this shall not be construed to permit any portion of the building or construction on any Lot to encroach upon another Lot or upon easements reserved or shown on the subdivision plat or plats.

**SECTION 5.12 Requirements Between Street and Set-Back Lines.** No improvements or other permanent fixture, excluding landscaping plantings, and mail boxes meeting the requirements of Section 3.2.4 hereof, shall be erected, placed or altered on any Lot between the street and the building set-back line unless the same be a retaining wall of masonry construction which does not in any event rise above the finished grade elevation of the earth embankment so retained, reinforced or stabilized. The exposed part of such retaining wall shall be made of brick, natural stone or concrete block veneered with brick, natural stone or other material approved by the Developer.

#### ARTICLE VI SET-BACK LINES AND EASEMENTS

**SECTION 6.1 Building Set-Back Lines.** The building set-back lines shall be in accordance with the requirements of the City of Auburn.

**SECTION 6.2 Easement.** Utility and drainage easements shall be designated on the plat of the subdivision.

#### ARTICLE VII OWNERS ASSOCIATION

**SECTION 7.1 Association.** Developer has organized an association of Owners in order to preserve the aesthetic appearance and the natural setting and beauty of the Development, and to protect and promote the value of the Property, the Lots, the Dwellings, and all Improvements within the Development. The Association is Cobblestone Owners Association, Inc., and it is an Alabama non-profit corporation. The Association shall be organized by Developer simultaneously with the recording of this Declaration.

**SECTION 7.2 Qualification of Members.** The Owner of each Lot or Dwelling shall be a member of the Association. Membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot. In the event any Lot or Dwelling is owned by more than one person then the Owners of such Lot shall designate only one representative to serve as a member of the Association who shall exercise all voting rights attributable to the Lot owned by such Owners.



No mortgagee shall become a member of the Association until such time, if at all, the Mortgagee becomes an Owner by virtue of a foreclosure of its mortgage and title to such encumbered Lot is vested in Mortgagee pursuant to a duly recorded deed. Each Member of the Association shall at all times comply with the provisions of this Declaration, the Articles of Incorporation, the Bylaws, and all rules and regulations which may from time to time be adopted by the Board or the Members of the Association.

**SECTION 7.3 Change of Membership.** Change of membership in the Association shall be established by the delivery to the Association of a certified copy of a deed or other instrument filed in the public records of Lee County, Alabama, establishing record title to the Lot in the new Owner. The Owner designated by such instrument shall thereby become a member of the Association and the membership of the prior Owner shall be thereby terminated.

**SECTION 7.4 Voting Rights.** Each Owner or Owners of a Lot shall be entitled to one vote which shall be cast as provided in the Articles of Incorporation and Bylaws of the Association.

**SECTION 7.5 Board of Directors.** The affairs of the Association shall be conducted by a Board of not less than three directors elected by a majority of votes cast by Owners at the annual meeting of the Association; provided, however, that Developer shall have the right to appoint or remove, with or without cause, any member of the Board or any officer or officers of the Association until such time as Developer is no longer the Owner of any Lot or Dwelling in the Development. Notwithstanding anything provided in this Declaration to the contrary, the provisions in this section may not be modified, rescinded, supplemented or amended, in whole or part, without prior written consent of Developer, its successors or assigns.

The Board shall have the rights and duties set forth in the Code of Alabama, this Declaration, the Articles of Incorporation and Bylaws of the Association.

**SECTION 7.6 Duties and Powers of Association.** In addition to the right, duties, responsibilities and obligations of the Association otherwise set forth in this Declaration, the Association shall have the power to do, cause to be done, and otherwise perform or cause to be performed any of the duties and powers set forth in the Articles of Incorporation and Bylaws of the Association. The Association may exercise any other right or privilege granted to it by this Declaration or by law. In the event of any conflict, ambiguity or inconsistency between the Code of Alabama, this Declaration, the Articles of Incorporation, the Bylaws or any other rules and regulations adopted by the Association then the provisions of the Code of Alabama, this Declaration, the Articles of Incorporation, the Bylaws, or any rules and regulations adopted by the Association, in that order, shall prevail and each Owner, by acceptance of a deed or other conveyance to a Lot or Dwelling, covenants and agrees to vote in favor of and execute any amendments as may be necessary to remove or alleviate any such conflict, ambiguity or inconsistency.

The powers of the Association shall include, but not be limited to:

7.6.1 The power to purchase one or more Lots and/or Dwellings and any other real or personal property, whether tangible or intangible, and to hold, lease, mortgage, sell, and otherwise convey the same.

7.6.2 The right to borrow money for the purpose of constructing, repairing, maintaining or improving the Development or any portion thereof or for providing any of the services authorized herein.

7.6.3 The right to give Mortgages or other security instruments encumbering all or any part of any property as security for any loan obtained by the Association, provided, however, that the lien and encumbrance of any such Mortgage shall be subject and subordinate to all of the rights, interests, privileges, easements, licenses, and options reserved or established herein for the benefit of Developer, the ACC, the Association and all Owners and Occupants.

7.6.4 The right to grant and accept easements.

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7.6.5 The right to dedicate or transfer fee simple title to all or any portion of the Property to any governmental authority, provided that the dedication or transfer of title is approved by a majority of those Owners present in person or by proxy at a duly held meeting of the Association called for such purpose.

7.6.6 The right to arrange with any governmental authorities or any public or private utilities, or others, for the furnishing of trash collection, water, sewer, and/or security services for the Lots and Dwellings. For so long as Developer shall own any Lot or Dwelling, the Association shall not, without the consent of Developer, borrow money or pledge, mortgage, encumber, sell, or otherwise convey any interest it may have in the Property.

7.6.7 Subject to the provisions of this Declaration, all actions, and determinations lawfully authorized by the Board shall be binding upon all Owners, their heirs, executors, personal representatives, administrators, successors and assigns and all others having any interest in the Development. The Association, through the Board, shall have the right and authority to delegate to any person or entity of its choice such duties of the Association as may be determined by the Board. Developer or any affiliate thereof may be employed as the manager of the Association and the Development for so long as Developer owns any Lot or Dwelling within the Development. Each Owner, by acceptance of a deed or other conveyance of a Lot or Dwelling, shall be deemed to ratify the provisions of this section and specifically be deemed to have approved any such management agreement entered into by the Association and Developer or any affiliate thereof.

7.6.8 The Board may establish and enforce reasonable rules and regulations governing the use of all Lots and Dwellings. These rules and regulations shall be binding upon all Owners and Occupants until and unless such rule or regulation is specifically overruled, cancelled, or modified by the Board or by the majority vote of the total voters of the Association at any regular or special meeting of the Association. No rules or regulations may be overruled, cancelled or modified unless such action is also approved by Developer for so long as Developer owns any Lot or Dwelling in the Development.

**SECTION 7.7 Indemnification.** The Association shall and does hereby indemnify, defend and agree to hold each and every officer, agent, representative and member of the Board of the Association harmless from and against any and all expenses, including court costs and reasonable attorney's fees, suffered, paid or incurred by any such officer, agent, representative, or member of the Board in connection with any action, suit or other proceeding to which such person may be made a party by reason of or having been an officer, agent, representative, or member of the Board of the Association. The officers, agents, representatives or member of the Board of the Association shall not be liable for any mistake in judgment, negligence, or otherwise, except for their own willful misconduct or reckless disregard of duty, as finally determined by a court of competent jurisdiction. The officers, agents, representatives and members of the Board of the Association shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association. The Association agrees to indemnify, defend and hold each and every officer, agent, representative and member of the Board of the Association harmless from any and all liability to others on account of any such contract or commitment.

## ARTICLE VIII ASSESSMENTS

**SECTION 8.1 Share of Expenses; Lien Right.** Each Lot Owner shall pay an annual assessment as provided in Section 8.3 and special assessments from time to time as provided in Section 8.6. No Owner may be exempt from liability of his share of such assessments. The annual and special assessments, together with interest thereon and costs of collection thereof, including attorney's fees, shall be charged against each Lot. The Association shall have therefor a continuing lien upon each Lot to secure all assessments made against the Owner of such Lot in the Development.

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successive weeks prior to said sale in some newspaper published in Lee County, Alabama, and, upon payment of the purchase money, the auctioneer conducting said sale for the Association is authorized to execute to the purchaser as said sale a deed to the property so purchased. The Association, acting on behalf of the Lot Owners, shall have the power to bid on the Lot at any foreclosure sale and to acquire, hold, lease, mortgage and convey the same. Non-use or abandonment of a Lot shall not constitute a defense against any action on account of any unpaid assessments.

**SECTION 8.8 Responsibility of Developer.** The Developer shall not have any responsibility to pay assessments regarding Lots which are unsold, unless it elects to pay the same.

#### **ARTICLE IX ENFORCEMENT**

**SECTION 9.1 Enforcement.** In the event of violation or breach of any of these restrictions by any property Owner, or family of such Owner, or agent or tenant or invitee of such Owner, the Owner(s) of Lot(s), the Developer, or any party to whose benefit the restrictions shall inure, shall have the right to proceed at law or in equity to compel compliance with terms and conditions hereof, to prevent the violation of said restrictions, to sue for and recover damages, reasonable attorney's fees, cost of court, or other charges or to take all such courses of action at the same time, or such other legal remedy it may deem appropriate. Any delay or failure on the part of that party to invoke an available remedy set forth herein shall not be held to be a waiver or an estoppel of that party or of any other party to assert any right available to that party upon the recurrence or continuation of said violation or the occurrence of a different violation.

#### **ARTICLE X CONSIDERATION**

**SECTION 10.1 Consideration.** The grantee(s) of any Lot subject to the coverage of these Restrictions and the Owner(s) of such Lot from time to time, by the acceptance of the conveyance or other instrument conveying an interest in or title to, or the execution of a contract for the purchase thereof, whether from the original Owners or a subsequent Owner of such Lot, shall accept such deed or other contract subject to each and all of these Restrictions and the agreement herein contained, whether or not such restrictions are recited in the instrument of conveyance.

#### **ARTICLE XI TERMS AND MODIFICATIONS**

**SECTION 11.1 Terms.** These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty (20) years from the date these covenants are recorded, after which time said covenants shall expire unless extended. One or more extensions of the term of these covenants may be made by recording, prior to the expiration of the original terms or any extension thereof, an instrument signed by the majority of the then Owners of the Lots extending the term of the said covenants. No extension shall be for a term longer than ten (10) years.

**SECTION 11.2 Modification.** Covenants and restrictions can be changed, modified, amended, altered or terminated at any time during the twenty (20) years from date by duly recorded written instrument executed by the then Owners (including mortgagees and other lien holders of record, if any) of the Lots in said Development.

#### **ARTICLE XII SEVERABILITY**

**SECTION 12.1 Severability.** Every one of the Restrictions is hereby declared to be independent of, and severable from the rest of the restrictions and of and from every other one of the

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restrictions and of and from every combination of the restrictions. Invalidation by any Court of any restrictions in this instrument shall in no way affect any of the other restrictions which shall remain in full force and effect.

**SECTION 12.2 Developer's Rights to Improve Standards.** The undersigned may include in any contract or deed hereinafter made or entered into, such modifications and/or additions to this Declaration, which will, by their nature, raise the standards of the Development.

**ARTICLE XIII  
CAPTIONS AND GENDER**

**SECTION 13.1 Captions.** The captions preceding the various paragraphs and subparagraphs of these Restrictions are for convenience of reference only, and none of them shall be used as an aid to the construction of any provision of the Restrictions.

**SECTION 13.2 Gender.** Wherever or whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or the neuter.

IN WITNESS WHEREOF, T & T Properties, L.L.C., has caused this Declaration to be properly executed, by W. Thomas Johnson, Managing Member and Taci G. Johnson, Member, who are all the members of T & T Properties, L.L.C., this the 12<sup>th</sup> day of August, 2003.

T & T PROPERTIES, L.L.C.

By: W. Thomas Johnson  
W. Thomas Johnson, Managing Member

By: Taci G. Johnson  
Taci G. Johnson, Member

STATE OF ALABAMA    )  
                                  )  
COUNTY OF LEE        )

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that W. Thomas Johnson whose name as Managing Member of T & T PROPERTIES, L.L.C., an Alabama Limited Liability Company, is signed to the foregoing Declaration, and who is known to me, acknowledged before me on this day that, being informed of the contents of this Declaration, he, as such Managing Member and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal, this the 12<sup>th</sup> day of August, 2003.

James E. Coy  
Notary Public  
My Commission expires: 07/28/07

NOTARY PUBLIC JUDGE, LEE COUNTY



**EXHIBIT A**  
**LEGAL DESCRIPTION**

Commence at the Southeast corner of Section 17, Township 19 North, Range 26 East, Auburn, Lee County, Alabama; thence North 87° 49' 12" West, a distance of 1191.66 feet to a point located on the northerly margin of East University Drive; thence leaving northerly margin of said road North 00° 14' 51" East, a distance of 572.05 feet; thence North 13° 21' 39" East, a distance of 2131.54 feet to the point of beginning of a parcel of land more fully described as follows: From this point of beginning thence South 35° 42' 52" West, a distance of 424.20 feet; thence South 82° 50' 52" West, a distance of 637.38 feet; thence North 69° 17' 18" West, a distance of 289.45 feet; thence North 00° 45' 54" West, a distance of 234.88 feet; thence North 85° 55' 03" East, a distance of 328.23 feet; thence North 11° 18' 41" East, a distance of 1011.75 feet; thence South 89° 14' 53" East, a distance of 846.15 feet; thence South 13° 21' 39" West, a distance of 943.34 feet to the point of beginning, said parcel containing 25.93 acres, more or less.

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*W. O. J. J. J.*