

1829832

STATE OF ALABAMA :

COUNTY OF BALDWIN :



DECLARATION OF COVENANTS, CONDITIONS & RESRICTIONS
OF
MIDDLE BRIGADOON, A SUBDIVISION

THIS DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS (hereinafter referred to as "Declaration") is made this 14th day of MAY, 2020 by BAKER CLARK HOMES, INC., a Corporation, (hereinafter referred to as "Declarant", as further defined below).

WHEREAS, Baker Clark Homes, Inc., is the owner of certain real property located in Baldwin County, Alabama, particularly described on Exhibit "A" attached hereto; and

WHEREAS, Declarant is in the process of causing the Subject Property to be subdivided into a subdivision to be known as "Middle Brigadoon, a Subdivision", (hereinafter referred to as "Middle Brigadoon"), which shall encompass the property described in Exhibit "A" and shall include Lots (hereinafter defined) and Common Area (hereinafter defined) and Wetlands (hereinafter defined). The Lots, Common Area and Wetlands shall hereinafter collectively be referred to as the "Subject Property"; and

WHEREAS, the Declarant, for itself, its successors and assigns, desires to and hereby does restrict the use of the Subject Property in the manner hereinafter set forth, for the purpose of preserving its character and value.

NOW THEREFORE, the Declarant hereby declares, that for itself, its successors and assigns, does hereby declare that all of the Subject Property 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 Property and be binding on all the parties having any right, title or interest in the Subject Property or any part thereof, their heirs, successors, assigns, and personal representatives, and shall inure to the benefit of each owner of any of the lands described therein as follows:

ARTICLE ONE
General Provisions

1.01 Restrictive Covenants and Easements Running with the Land. The use of the Subject Property shall be in accordance with the provisions and restrictions of this Declaration, all of which are to be construed as restrictive covenants and/or easements, as applicable, running with the land and with the title to each and every Lot and shall be binding upon all Owners and other persons having interests therein and upon their heirs, personal representatives, successors, grantees and assigns.

1.02 Terminology. Whenever the context requires, words used in the singular shall be construed to mean or to include the plural and vice versa, and pronouns of any gender shall be deemed to include and to designate the masculine, feminine or neuter gender.

1.03 Definitions. The following terms, when capitalized herein, shall have the meaning set forth in this Section 1.03:

- (a) "Adult" means a person of age twenty-one (21) years or older.
- (b) "Architectural Review Committee" means the Architectural Review Committee as established by the Board of Directors in accordance with the By-Laws.

- (c) "Association" means Middle Brigadoon Owners Association, Inc., an Alabama Non-Profit Corporation.
- (d) "Board" or "Board of Directors" means the Board of Directors of the Association, established in accordance with the Certificate of Formation and By-Laws of the Association.
- (e) "Builder" means any commercial home builder or contractor who owns one or more Lots in the Subdivision and is in the business of constructing residential structures to sell to owner-occupants.
- (f) "By-Laws" means the By-Laws of the Association, as the same may hereinafter be amended, altered or repealed from time to time.
- (g) "Certificate of Formation" means the Certificate of Formation of Middle Brigadoon Owners Association, Inc., an Alabama Non-Profit Corporation, as recorded in the records of the Office of the Judge of Probate of Baldwin County, Alabama, as the same may hereafter be amended, altered or repealed from time to time.
- (h) "Common Area" means all real property within the Subdivision which is owned or leased by the Association or dedicated for use or maintenance by the Association or its members, regardless of whether title has been conveyed to the Association; including, without limitation, the Wetlands and designated Common Area.
- (i) "Conservation Easement" means that certain Conservation Easement recorded at Instrument # 1829831, in the records of the Office of the Judge of Probate of Baldwin County, Alabama.
- (j) "Declarant" means Baker Clark Homes, Inc., a Corporation, its successors and assigns which expressly are assigned and assume the Declarant's rights as "Declarant" hereunder.
- (k) "HOA Act" shall mean the Alabama Homeowners' Association Act, currently codified at Chapter 20 of Title 35 of the Code of Alabama (1975), as the same may hereafter be altered, amended, replaced, and/or restated from time to time.
- (l) "House" or "Home" means any single family dwelling unit situated upon a Lot.
- (m) "Lot" means each and every numbered lot shown on the Plat of Subdivision.
- (n) "Member" means every person or entity who is a member of the Association.
- (o) "Mortgagee" means a holder or beneficiary of any mortgage, deed with vendor's lien reserved, or any other form of instrument used for the purpose of encumbering or conveying real property as security for payment or satisfaction of any obligation.
- (p) "Owner" means the record owner, whether one or more persons or entities, of a fee simple title to any Lot, including contract sellers, but excluding mortgagees, lien holders, lessees, tenants, and those having such interests solely as security for the performance of an obligation.
- (q) "Person" means any individual, corporation, trust, partnership, joint venture, limited liability company or other entity.
- (r) "Plat of Subdivision" means that certain Plat recorded at Instrument # 1829830 and Slide 2726-B, for Middle Brigadoon.

- (s) "Subdivision" means Middle Brigadoon, a subdivision as shown on the Plat of Subdivision.
- (t) "Subject Property" means all of the Lots, the Common Area and the Wetlands, collectively.
- (u) "Turnover" means the earlier to occur of: (i) Declarant relinquishing control of the Association in a written instrument recorded in the real property records of Baldwin County, Alabama; (ii) four (4) months after one hundred percent (100%) of the lots in the Subdivision have been conveyed to persons other than Declarant or Declarant's successors or assigns; or (iii) December 31, 2030; provided however, in the event of a conflict between the Alabama law and the foregoing, the applicable Alabama law shall control.
- (v) "Wetlands" means all that real property designated at Wetland Area #1 and Wetland Area #2, as shown on the Plat of Subdivision.

ARTICLE TWO

Common Area

2.01 **Common Area.** The Association, subject to the rights of the Owners set forth in this Declaration, the Certificate of Formation and the By-Laws, shall be responsible for the exclusive maintenance, management, and control of the Common Area and all improvements thereon, and shall keep the Common Area in good, clean, attractive, and sanitary condition, order, and repair pursuant to the terms and conditions of this Declaration. The Association has the right to restrict the use and govern the operation of the Common Area by promulgating reasonable rules and regulations, including with respect to any Common Area facilities, the right to charge reasonable one-time or monthly fees for the use thereof by the Owners as the Association deems necessary or appropriate. Rules and regulations may be established by the Association to regulate the use of the Common Area.

2.02 **Right of Enjoyment.** Subject to any rules and regulations promulgated by the Board of Directors and the terms and conditions of the HOA Act and the By-Laws, every Member shall have a right and easement of enjoyment of the Common Area, and such easement shall be appurtenant to and pass with the title to each Lot.

2.03 **Lots Subject to Covenants, Restrictions, Limitations and Term.** Each Lot that shall be conveyed, held, devised, leased, or demised at any time hereafter shall be subject to all the terms, conditions, covenants, restrictions and limitations herein contained, and the obligation to observe and perform the same whether or not it be so expressed in the deed or other instrument of conveyance of the Lot or real property, and such shall run with the Lot or real property and be appurtenant thereto as if fully set out in such deed or instrument of conveyance, subject to the terms and conditions hereof.

2.04 **Easements.**

- (a) **Easements and Conservation Easement Area.** All of the other easements shown on the Plat of Subdivision and the Conservation Easement, are hereby adopted as part of this Declaration, and all Lots in the Subdivision shall be subject to such easements and the Conservation Easement. Any portion of the Conservation Easement Area that is not included within the boundary of a Lot shall be owned by the Association.
- (b) **Structures.** No dwelling unit, house, home and/or other structure of any kind shall be built, erected, or maintained upon any easement or the Conservation Easement Area. The easements shall at all times be open and accessible to public and quasi-public utility providers, and to other persons erecting, constructing or servicing such areas, and to the Association, its successors or assigns, all of whom shall have the right of

ingress and egress thereto and therefrom, and the right and privilege of doing whatever may be necessary in, under, and upon said easements for the carrying out of any of the purposes for which said easements are hereby reserved and may hereafter be reserved.

2.05 Overhead Wires. No Lot shall be served with any overhead electrical or communications service, and no Owner shall erect power poles for such service; provided, however, that nothing herein shall be construed to prohibit overhead street lighting or ornamental yard lighting provided that such lighting is constructed in accordance with the terms and conditions hereof.

2.06 Control of Common Area. The Association may, upon approval by the Board of Directors, sell, subdivide, lease, mortgage, grant easements over or otherwise encumber the Common Area, or exchange all or any portion of the Common Area for Lots or other real property, or purchase or acquire any additional real property and dedicate the same as a Common Area subject to the terms of this Declaration.

2.07 Condemnation. In the event of taking by eminent domain of any portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements so taken on the remaining Common Area, unless within sixty (60) days after such taking, an alternative plan is approved by at least seventy-five percent (75%) of the voting interest of the Members. The provisions of this Declaration applicable to replacement or restoration of damaged improvements on the Common Area shall also apply to and govern the actions to be taken in the event that the improvements are not restored or replaced after condemnation.

2.08 Liability. Owners, occupants and their guests shall use and enjoy the Common Area at their own risk and shall assume sole responsibility for their personal belongings used or stored there. The Association, Declarant and their respective officers, directors, employees, representatives and agents shall not be held liable for personal injury to any person, nor for loss or damage to personal belongings used or stored on any of the Common Area. The Association shall not be liable for injury or damage to any person or property: (i) caused by the elements or by an Owner or any other person; (ii) resulting from any rain or other surface water which may leak or flow from any street, pipe, plumbing, drain, conduit, appliance, equipment, security system, or utility line or facility, the responsibility of the maintenance of which is that of the Association; or (iii) caused by any street, pipe, plumbing, drain, conduit appliance, equipment, security system, utility line, facility or from any portion of the Common Area, the responsibility for maintenance of which is that of the Association, becoming out of repair. Nor shall the Association be liable to any Owner or occupant for loss or damage, by theft or otherwise, of any property of such Owner or occupant.

ARTICLE THREE

Association Membership and Voting Rights

3.01 Membership. Each Owner shall be a Member, subject to the terms and conditions of the Certificate of Formation and the By-Laws.

3.02 Voting. Voting by Owners shall be in accordance with the By-Laws.

3.03 Assignment. The share of a Member in the funds and assets of the Association cannot be assigned, hypothecated, or transferred in any manner except as an appurtenance of said Owner's Lot.

ARTICLE FOUR

Covenant for Maintenance Assessments

4.01 Personal Obligation of Assessments. Declarant, for each Lot, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not is shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (i) annual assessments or charges; (ii) special assessments; and (iii) any individual assessments, fines or charges charged against the Lot or Owner, as

such assessments are hereinafter established and shall be collected as hereinafter provided (singularly, an "Assessment" and collectively, the "Assessments"). The annual, special and individual assessments, together with interest, costs, an administrative late fee not to exceed the greater of Twenty Dollars (\$20.00) or five percent (5%) of the amount of each installment that is past due, and reasonable attorneys' fees, shall be a charge on the Lot and shall be a continuing lien upon the property against which each such Assessment is made effective from and relating back to the date on which this Declaration was recorded. Any payment received and accepted by the Association shall be applied first to any interest accrued, then to any administrative late fee, then to any costs and reasonable attorney's fees, and then to the delinquent Assessments. Each such Assessment, together with interest, costs, the administrative late fee and reasonable attorneys' 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 pass to successors in title.

4.02 Purpose of Assessments. The Assessments levied by the Association shall be used to provide for the operation of the Association and the management, care and maintenance of the Common Area and any improvements constructed thereon, including provision for appropriate insurance against casualty and liability. At the Board's direction, the Association may establish and maintain a reserve fund with such sums as the Board determines in good faith are necessary and adequate for the periodic maintenance, repair and replacement of improvements to the Common Area (the "Reserve Account").

4.03 Annual Assessments. To provide the total sum necessary for the insurance purchased by the Association hereunder, the Reserve Account, the maintenance, repair and replacement (if applicable) of any improvements located on the Common Area, and any and all other expenses of the Association (whether pertaining to the ownership, operation, use, maintenance and/or repair of the Common Areas or otherwise), each Member for each Lot owned shall pay a portion of the total amount necessary for such purposes to the Association. The portion to be paid by each Member for each Lot shall be determined in accordance with Section 4.06 hereof. The amount of the annual Assessment assessed against each Member as provided under the foregoing sentence shall be assessed by the Association as a lien at the beginning of each annual Assessment period.

4.04 Special Assessments for Capital Improvements Upon Common Area. In addition to the annual Assessments authorized above, the Board of Directors 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 Area and any entrance wall or signage, including fixture and personal property related thereto; provided, however, that the total of all such special Assessments for any given calendar year shall not exceed \$1,000.00 per Lot, unless such special Assessment in excess of such total are approved by affirmative vote of the Members holding a majority of the voting rights in the Association.

4.05 Date of Commencement of Annual Assessments and Due Dates. The Assessments provided for herein shall only be assessed against Lots upon which a House has been constructed, and received a certificate of occupancy or such Assessment will commence as to a particular Lot upon conveyance of the Lot to any Owner who is not the Declarant or a Builder. 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 Board of Directors shall determine if annual and special Assessments will be collected annually, quarterly or at some other interval and shall set due dates for Assessment payments. If the Board of Directors does not fix an annual Assessment in advance of any annual Assessment period, the annual Assessment for the period will be the same as for the prior period until the Board fixes a new annual Assessment Amount.

4.06 Assessment Shares. Each Member shall be responsible for a portion of any annual or special Assessments levied against the Members equal to a fraction calculated in accordance with the following: the numerator of such fraction shall be the number of Lots owned by such Member and the denominator of which shall be the total number of Lots in the Subdivision at the time such Assessment is

levied. The quotient of such fraction shall be multiplied by the total sum of the applicable Assessment, and the resulting figure shall be the portion of such assessment that is owed by the applicable Member.

4.07 Initial Capital Contribution Assessment. An Assessment is hereby levied against, and due upon the closing of the initial sale of each Lot in the amount of Two Thousand Five Hundred Dollars (\$2,500.00) against the purchaser of each Lot (whether such Lot has a completed Home located upon it or otherwise). The proceeds of such Assessment may be used by the Association for any purpose for which the Association is authorized under the Articles or this Declaration.

4.08 Reservation of Lien: Effect of Nonpayment of Assessments; and Remedies of the Association. Any Assessment not paid within thirty (30) days after the due date shall bear interest thereon at a rate to be set by the Board of Directors but in no event greater than the maximum percentage rate as may then be permitted under the laws of the State of Alabama. The Association may bring an action at law or in equity against the Owner personally obligated to pay any Assessment, foreclose a lien against the Lot(s) against which the Assessment is applicable, or seek injunctive relief. Furthermore, a lien is hereby reserved in favor of the Association against each Lot in the amount of all Assessments outstanding against such Lot (the "Assessment Lien"). Interest, costs, and reasonable attorneys' fees of any action brought by the Association in respect of an Assessment and/or the Assessment Lien applicable to such Assessment shall be added to the amount of such Assessment and shall be secured by the Assessment Lien. Each such Owner, by his acceptance of a deed to or other conveyance of an interest in a Lot, hereby expressly vests in the Association the right and power to bring all actions against such Owner personally for the collection of each Assessment as a debt and to foreclose the Assessment Lien by all methods available for the enforcement of such liens, including foreclosures by an action brought in the name of the Association in a like manner as a mortgage lien on real property, and such Owner hereby expressly grants to the Association a power of sale in connection with the Assessment Lien. The Assessment Lien may be foreclosed by the Association in the same manner as real estate mortgages in the State of Alabama. The Association shall have the power to bid for an interest foreclosed under an Assessment Lien at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. No Owner may waive or otherwise escape liability for the Assessments by non-use of the Common Area or abandonment of said Owner's Lot. The Board of Directors may also suspend the use rights of any Owner of the Common Area in the event of a failure to pay any Assessments within thirty (30) days of the applicable due date. Furthermore, and without limiting any rights of the Association hereunder, the Association shall have the right to transfer, assign and convey to any third party any debt associated with any unpaid Assessments and the Assessment Lien that is associated therewith.

4.09 Lien Rights Under the HOA Act. The lien rights granted and reserved to the Association in accordance with Section 4.08 hereof shall be in addition to, and shall not be in lieu of, the lien rights that are granted to the Association by Section 35-20-12 of the HOA Act. The Association shall have the right, exercisable by the Board of Directors in its sole and absolute discretion, to elect from time to time whether to establish, record, enforce, foreclose or otherwise treat a lien against an Owner's Lot as being: (i) an Assessment Lien granted and reserved in accordance with this Declaration; or (ii) a lien granted to the Association by Section 35-20-12 of the HOA Act. Any lien granted to the Association by Section 35-20-12 of the HOA Act and sought to be enforced by the Association shall be enforced in accordance with the terms and conditions of the HOA Act.

4.10 Election of Remedies. Institution of a suit at law to collect payment of any delinquent Assessments shall not be deemed to be an election by the Association which shall prevent its thereafter seeking enforcement of the collection by foreclosure of any sums remaining owing to it, nor shall proceeding by foreclosure to effect such collection be deemed to be an election precluding the institution of a suit at law to collect any sum then remaining owing to the Association. The Association shall be entitled to bid at any sale held in connection with the foreclosure of the Assessment Lien and may apply as a cash credit against its bid all sums secured by the lien enforced.

4.11 Subordination of the Lien to Mortgages. The Assessment Lien shall be subordinate to the lien of any first mortgage on a Lot. Sale or transfer of any Lot shall not affect the Assessment Lien; provided, however, the sale or transfer of any Lot pursuant to foreclosure of a first mortgage on said Lot or

any proceeding in lieu thereof, shall extinguish the Assessment Lien as to payment which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the Assessment Lien associated therewith or relieve the prior Owner from any personal liability for any unpaid Assessments occurring prior to said sale or transfer.

4.12 Estoppel Letter. The Association shall, within thirty (30) days after receiving a written request therefor and for a reasonable charge, as established by the Board of Directors, certify to the amount of any unpaid Assessments constituting a lien on a specific Lot. A certification letter signed by an officer of the Association or the Association's managing agent, if any, as to the amount of Assessment due with respect to a Lot shall be binding upon the Association.

ARTICLE FIVE

Maintenance and Repair

5.01 Maintenance. The Association shall provide maintenance of the Common Area. In addition, the Association shall have the right, but not the obligation, to maintain other property not owned by the Association, whether within or without the Subdivision and to enter into easements and covenant to share costs agreements regarding such property where the Board has determined that such action would benefit the Owners. Without limiting the foregoing, the Association shall have a reasonable right of entry upon any Lot to make emergency repairs and to do other work reasonably necessary for the proper maintenance and operation of the Common Area and to carry out its rights and duties set forth in this Declaration. Each Owner shall maintain his or her respective Lot and shall also maintain and repair, at such Owner's sole cost and expense, said Owner's House, patio and yard area keeping the same in good condition and making all structural repairs and maintenance, external and internal, as may be required from time to time, including, but not limited to maintenance and repairs of any enclosed patio area, screens and screen doors, exterior door and window fixtures, glass, and other hardware. Each Owner shall also be responsible for the maintenance and repair of any fence or fences erected on such Owner's Lot and gates appurtenant thereto.

5.02 Failure to Maintain. In the event an Owner shall fail to maintain and repair his Lot and the improvements situated thereon, as provided for herein and provided that the failure to so maintain shall cause damage or injury to the adjoining Lot or to common structural elements which affect an adjoining Lot, the Association, after approval by a majority vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon said Lot and to repair, maintain and restore the Lot and the House and any other improvements erected thereon. The cost of the same shall be added to and become part of the Assessment to which such Lot is subject; provided, however, if a dispute arises concerning the foregoing between the Owner and the Association, the matter may be submitted to arbitration in accordance with the mutual agreement of the parties.

5.03 Damage to Common Area. Notwithstanding anything contained in this Article Five to the contrary, each Owner shall be personally responsible and personally liable for any damage to the Common Area, or any portion thereof, caused by the Owner and/or the Owner's family members, guests, invitees, lessees or licensees as a consequence of the negligence, recklessness or willful misconduct of such person. The cost of repair for any damage so caused by the Owner, the Owner's family members, guests, invitees, lessees or licensees shall be an individual Assessment against the Owner responsible therefore and the Lot of such Owner.

ARTICLE SIX

Architectural Control

6.01 Submission of Plans and Specifications. No House, building, fence, wall, or other structure or improvement shall be constructed, erected or maintained upon any Lot, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications of the same shall have been submitted by an Owner to an approved in writing as in harmony with this Declaration by the Architectural Review Committee. Two (2) copies of the building or construction plans and specifications (collectively, the "Plans") shall be submitted to the Architectural Review Committee. Prior to

Commencement of any construction activities on a Lot, an Owner's Plans must be approved by the Architectural Review Committee as to conformity and harmony with this Declaration. The Architectural Review Committee may, from time to time, establish additional written design guidelines for the Subdivision, and a copy of any such guidelines then in effect shall be made available to any Member requiring a copy of same from the Association.

6.02 Approval or Disapproval. The Architectural Review Committee shall indicate its approval or disapproval of such plans and specifications by delivering, in writing, notice of such approval or disapproval to the requesting Owner. In the event the Architectural Review committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval shall be deemed automatically given.

6.03 Right of Inspection. The Architectural Review Committee shall have the right, but not the obligation, to inspect the Owner's Lot and improvements during construction and prior to occupancy to inspect whether construction is proceeding in accordance with the construction plans submitted and approved by the Architectural Review Committee. Failure of an Owner to comply with the provisions of this Section 6.03, or failure of an Owner to carry out construction in accordance with the provisions of this Article, shall subject such Owner to such remedies as might be available at law or in equity (including, but not limited to, specific performance injunction, payment of the prosecuting parties' reasonable legal fees and expenses).

6.04 Limited Review. The scope of review by the Architectural Review Committee is limited to appearance only and does not include any responsibility for structural soundness, suitability of construction or materials, compliance with building or zoning codes or standards, this Declaration, or any other similar or dissimilar factors.

6.05 Waiver of Liability. Neither the Architectural Review Committee nor any architect nor agent thereof nor the Association nor any agent or employee of any of the foregoing shall be responsible in any way for the failure of any improvements to comply with the requirements of this Declaration, nor for any defects in any plans and specifications submitted, revised or approved in accordance with the foregoing provisions, nor for any structural or other defects in any work done according to such plans and specifications, and all persons relying thereon or benefiting therefrom agree not to sue or claim against the entities and persons referred to in this Section for any cause arising out of the matters referred to herein and further agree to and do hereby release said entities and persons for any and every such cause.

ARTICLE SEVEN

Use Restrictions

7.01 Residential Use; Commercial Activity. Except as is hereinafter provided in this Section and in Section 10.01(c) hereof, each Lot is hereby restricted to a private, single-family dwelling for residential use. No commercial activities of any kind whatsoever shall be conducted in any Home, any other building located on a Lot, or any portion of any Lot; provided, however, that: (i) an Owner may conduct a business entirely within his Home so long as; (a) such business uses only ten percent (10%) of the total square footage of such Home; (b) such business does not result in parking of additional vehicles on the Subdivision streets or Common Areas; (c) such business is secondary to the use of the Lot for residential purposes; and (d) such business shall not violate any applicable zoning ordinances; and (ii) Builders shall have the right to use a House as a "model home" and to operate a sales office from such model home.

7.02 Subdivision of Lots. Each Lot shall be conveyed as a separately designated and legally described freehold estate subject to the terms, conditions, and provisions hereof, to easements and rights-of-way, and matters of public record. No Lot may be subdivided into a smaller Lot or Lots unless approved by the Association; provided, however, that an entire Lot may be combined with an entire adjacent Lot and occupied as one Lot but assessed and governed as two Lots.

7.03 Signs. No sign of any kind shall be displayed on an Lot (including, without limitation, any signage within a Home that is visible from the exterior of such Home), except: (i) that any Owner actively attempting to sell his Lot may place a "for sale" sign of less than four (4) square feet on his Lot; (ii) during the building of homes in the Subdivision, Declarant and/or the Builders in the Subdivision may place signs at the entrance and/or on any Lot to advertise the Subdivision and the Lots for sale therein; and (iii) any Owner may display a sign of reasonable size provided by a contractor for security services within ten (10) feet of any entrance to the home.

7.04 Noxious and Offensive Activity. No noxious or offensive activity shall be carried on, in or upon any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to any other Owner.

7.05 Design Criteria: Structure. All improvements to be constructed or otherwise located on a Lot by an Owner shall comply with the following requirements:

- (a) Any House shall contain a minimum of One Thousand Two Hundred (1,200) square feet of heated and cooled living space.
- (b) No House may exceed three (3) habitable stories above grade.
- (c) The residential structure may contain a garage or carport; provided however, that no garage or carport may have a flat roof and any such garage or carport shall be in conformity with the general architecture of the primary residential building or structure.
- (d) Air-conditioning and heating units, blowers, towers, condensers or structures related thereto, when erected between the side of any building or structure and the side Lot line of the Lot on which said building or structure is located, shall be shielded by shrubbery. No window air-conditioning units shall be permitted on the front or sides of any residence so as to be visible from the front line of such Lot.
- (e) All outside radio and T.V. antennas (including satellite dishes and other signal receiving/transmitting equipment) shall be installed in such a way as to minimize visibility from the front of the Lot and shall be placed on the back or side of any roof.
- (f) No plumbing or heating vent shall be place on the front side of any roof.
- (g) During construction, all vehicles, including those delivering supplies, must be parked so as not to unnecessarily damage trees on a Lot or Common Area.
- (h) All building debris, stumps, trees, etc., must be removed from each Lot by the Owner thereof as often as necessary to keep the House and Lot attractive. Such debris shall not be dumped in any area of the Subdivision.
- (i) No outside clothes lines shall be permitted.
- (j) Following construction of a Home on a Lot, existing drainage shall not be altered in any manner, and specifically shall not be altered in such a manner as to divert the flow of water onto an adjacent Lot.

7.06 Animals. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot except that dogs, cats, and other household pets may be kept subject to the rules and regulations adopted by the Association, provided that they are not kept, bred, or maintained for any commercial purposes. Pets must be kept leashed and/or under control at all times.

7.07 Waste. No rubbish, trash, garbage, or other waste material shall be kept or permitted upon any Lot except in sanitary containers located in appropriate area, screened and concealed from view.

7.08 Accessory Structures. Except as otherwise provided for herein, no patio cover, building or storage unit of any kind shall be erected, placed or set on any Lot unless such structure is attached to the House erected on the same Lot and the architecture and character of such structure matches that of said House. Notwithstanding the foregoing, one (1) accessory building may be erected, placed or set on any Lot if such structure is: (i) no more than eight (8) feet in height; (ii) located upon the back yard of such Lot; (iii) enclosed on all sides by a wooden fence of at least six (6) feet in height; (iv) of the same architectural and character of the House located on such Lot; and (v) approved by the Architectural Review Committee.

7.09 Temporary Structures. No structure of a temporary character, trailer, mobile home, motor home, modular building unit, basement, tent, shack, garage, barn, or other outbuilding shall be used at any time on the Lots as a residence, either temporarily or permanently.

7.10 Vehicles. No inoperative cars, trucks, trailers, boats, campers or other types of vehicles shall be allowed to remain either on or adjacent to any Lot for a period in excess of forty-eight (48) hours; provided, however, this provision shall not apply to any such vehicle being kept in an enclosed garage.

7.11 Construction.

- (a) When the construction of any improvement upon any Lot has begun, work thereon shall be pursued diligently and continuously until full completion. All construction sites must be kept clean, and debris shall not be allowed to accumulate. During construction, the use of dumpsters for routine cleaning of construction sites is permitted.
- (b) No residence constructed on any Lot may be occupied prior to its substantial completion.
- (c) Landscaping shall be completed within sixty (60) days after completion of construction.

7.12 Pollution. There shall be no noxious emission of smoke, dust, odor, fumes, glare, noise, vibration, electrical or magnetic disturbance, detectable at the lot line or beyond.

7.13 Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish, trash, garbage, or waste. All storage equipment for such material shall be kept in a clean and sanitary condition.

7.14 Oil and Mining Operations. No activity or hardware used for the purpose of exploration or extraction of minerals, oil, or gas shall be allowed on any Subject Property at any time.

7.15 Firearms and Fireworks. The display or discharge of firearms or fireworks on any Lot or any Common Area is prohibited; provided, however, that the display of lawful firearms on the Common Area is permitted by law enforcement officers and also is permitted for the limited purpose of transferring firearms across the Common Area to or from an Owner's Lot. The term "firearms" includes "B-B" guns, pellet guns and other firearms of all types, regardless of size.

7.16 Hazardous Items. No one shall use or permit to be brought onto any Lot or upon any of the Common Area any flammable oils or fluids such as gasoline, kerosene, naphtha or benzene, or other explosives or articles deemed hazardous to life, limb or property, without the written consent of the Board of Directors; provided, however, that an Owner may store and possess gasoline and other flammable or hazardous materials typically used in the operation and maintenance of a single family residence and yard, in reasonable quantities for personal use upon Owner's Lot without obtain such written consent. The Board of Directors may require removal of any flammable or hazardous materials from the Subdivision if it

determines, at its sole and absolute discretion, that any type or quantity of material is in violation of this Section.

7.17 Water and Sewer Service. The Owner of each Lot shall be required to connect to and use the central water distribution system and central sanitary sewage disposal system serving the Subdivision, and shall be responsible for paying all connection fees and assessments. No septic tanks or wells will be permitted.

7.18 Lots on Wetland Areas, Body of Water. No Lot shall be increased in size by filling in of any wetlands, body of water, creek or any waterway on which it may abut without appropriate governmental permits (if any are required) and prior written approval of the Architectural Review Committee.

7.19 Compliance With Law. In all cases, each Owner shall comply in all respects with all applicable laws, rules and regulations (including, without limitation, applicable zoning ordinances) promulgated by any governmental authority having jurisdiction over the Lots and the Common Area.

7.20 Swimming Pools. No swimming pools shall be constructed, altered or maintained upon any Lot without prior written approval of the Architectural Review Committee in accordance with Article Six hereof. Notwithstanding the foregoing, any such swimming pool must also be constructed, equipped, and maintained in accordance with the laws, ordinances, regulations, rules and standards of any city, county, and/or state authorities having jurisdiction over the Subdivision. Any Owner who desires to construct a swimming pool on such Owner's Lot shall also, prior to completion of such swimming pool, construct a fence around such swimming pool, which fence must also be approved by the Architectural Review Committee in accordance with Article Six hereof. Notwithstanding anything contained herein to the contrary: (i) above-ground pools are expressly prohibited; and (ii) pools may not be screened.

ARTICLE EIGHT **Additional Restrictions**

8.01 Leasing. Homes and Lots may be leased by an Owner for residential purposes only; provided, however, that any such leasing activities shall be subject to the following terms and conditions: (i) any such lease and the rights of any tenants thereunder are hereby made expressly subject to the power of the Association to prescribe reasonable rules and regulations relating to the lease and rental of Lots and Homes and to enforce the same directly against such tenant or other occupant by the exercise of such remedies as the Board of Directors deems appropriate, including eviction; (ii) no such lease shall be for less than one hundred eighty-one (181) days; (iii) no lease shall violate any applicable zoning ordinance; and (iv) all leases must be in writing, with a copy provided to the Association upon request by the Association. Any Owner who leases his Home or any portion thereof shall be responsible for the acts of his tenants, including, without limitation, the violation of this Declaration and/or any rules and regulations promulgated by the Association hereunder.

8.02 Restrictions on Mortgaging Lots. Nothing contained herein shall be construed to place any restrictions on an Owner's right to mortgage his Lot.

8.03 Regulations. Reasonable regulations concerning the use of the Lots and the Common Area may be made and amended from time to time by the Board of Directors.

8.04 Lender's Notices. Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor and the Lot number or address, any mortgage holder, insurer, or guarantor will be entitled to timely written notice of:

- (a) Any condemnation or casualty loss that affects either a material portion of the Common Area or the Lot securing its mortgage.

- (b) Any sixty (60) day delinquency in the payment of Assessments or charges owed by the Owner of any Lot on which it holds the mortgage.

ARTICLE NINE

Enforcement; Duration; Amendment

9.01 **Enforcement.** The Association, the Board of Directors, the Architectural Review Committee and/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 imposed by the provisions of this Declaration. Failure by the Association, the Board of Directors, the Architectural Review Committee and/or 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.

9.02 **Enforcement by Owners.** An Owner may file a legal action for the violation of this Declaration (the "Complainant"), provided that the following procedure is strictly followed:

- (a) The Complainant must first give the Association written notice of the alleged violation of this Declaration together with a demand seeking that the Association enforce the terms of this Declaration as against said violator; and
- (b) The Association must fail to cause a cure of the alleged violation or, if the alleged violation has not been cured, fail to commence legal proceedings against said violator for the enforcement of the terms and conditions of this Declaration within one hundred twenty (120) days of the date of the Association's receipt of the notice referenced in subsection (a) hereof.

9.03 **Attorneys' Fees.** In any action (whether in advance of or prior to the initiation of any legal or equitable proceeding, in arbitration, in trial, in any administrative or other similar proceedings, or in any appeal from any of the same) pertaining to any condition, restriction or covenant herein contained (due to their alleged violation or breach) or for the enforcement of any lien against any Lot or against any Person, unless otherwise expressly provided in this Declaration to the contrary for specific instances and conflicts, the prevailing party shall be entitled to recover all costs, including reasonable legal fees and expenses.

9.04 **Term.** This Declaration is to take effect upon recordation and shall be binding upon the Association and all Owners and all persons and entities claiming title under and through them for fifty (50) years after the date this Declaration is recorded in the public records, after which it shall be automatically extended for successive ten (10) year periods unless an instrument in writing, signed by Members holding at least eighty percent (80%) of the voting interests in the Association, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated as specified therein.

9.05 **No Additional Burden.** Except as provided in Article Ten, no amendment of this Declaration shall take place an additional burden or restriction or requirement on any Lot where the Owner of such Lot does not join in said amending instrument.

9.06 **Amendments.** Except as provided in Article Ten, this Declaration may be amended by vote of the Members having sixty-seven percent (67%) of the voting interest in the Association, or by a written instrument signed by the same percentage of Members; provided, however, that unless and until Turnover has occurred no such amendment may be effected without the written consent of Declarant to such amendment, which consent may be withheld by Declarant in Declarant's sole and absolute discretion. Declarant shall have and reserves the right at any time from time to time, without the joinder or consent of any other party to amend this Declaration by any instrument in writing duly signed, acknowledged and filed for record for the purpose of correcting any typographical or grammatical error, ambiguity or inconsistency appearing herein, provided that any such amendment shall be consistent with and in furtherance of the

general plan and scheme of development as evidenced by this Declaration and shall not impair or adversely affect the vesting property or other rights of any Owner or such Owner's Mortgagee.

ARTICLE TEN

Reserved Declarant Rights

10.01 **General Reserved Rights.** Until Turnover, Declarant reserves unto itself, its successors and assigns:

- (a) A right-of-way and easement for ingress and egress and easement for utilities, drainage, maintenance, repairs and other related uses over, along, and across the Common Area for all purposes relating in any manner to the subdividing, developing or aiding in the development of the Subdivision or any parts or parts thereof or additions thereto by Declarant or others.
- (b) The right to grant easements and rights-of-way of ingress and egress and for drainage, utilities, maintenance and repairs along, over, across and under the Common Area to any person, firm, corporation or entity for use as ingress or egress or for drainage, utilities, maintenance and repairs.
- (c) The right to maintain, and grant Builders the right to maintain, a sales office and/or a management office and/or one or more model homes in the Subdivision and to maintain signs therein advertising the Subdivision and to conduct its business and sales activities pertaining to the Subdivision therein and therefrom.

All of the above rights and interests reserved by Declarant may be exercised by Declarant without the consent or concurrence of the Association or any Member.

10.02 **Amendment of Declaration by Declarant.** Until Turnover, Declarant reserves unto itself the right, authority and power to amend this Declaration in any manner Declarant deems necessary and appropriate. Any amendment to this Declaration made in accordance with this Section shall require only the signature of Declarant and shall not require the signature of any other Owner or any Mortgagee of any Owner.

10.03 **Turnover.** All rights of Declarant hereunder shall automatically terminate upon Turnover, except those rights that Declarant holds as an Owner and not by virtue of being the declarant under this Declaration, which shall continue as long as Declarant is an Owner.

ARTICLE ELEVEN

Insurance; Casualty

11.01 **Insurance on Common Area.** The Association shall obtain the insurance coverage necessary to satisfy the requirements, if any, of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the U.S. Department of Veterans Affairs, and the U.S. Department of Housing and Urban Development, as applicable to the Subdivision. Without limiting the foregoing, the Board shall obtain casualty insurance for all insurable improvements, whether or not located on the Common Area, which the Association is obligated to maintain. This insurance shall provide, at a minimum, fire and extended coverage and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. The Board shall obtain a public liability policy applicable to the Common Area covering the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents, and, if reasonably available, directors' and officers' liability insurance. Policies may contain a reasonable deductible as determined by the Board. In addition to the other insurance required by this Section, the Board shall obtain worker's compensation insurance, if and to the extent necessary to satisfy the requirements of applicable laws, and a fidelity bond or bonds on directors, officers, employees and other persons handling or responsible for the Association's funds, if reasonably available. If obtained, the

amount of fidelity coverage shall cover the maximum funds that will be in the custody of the Association or its management agent at any time while the policy is in force, or any lesser amount of fidelity coverage allowable under the applicable Fannie Mae guidelines. Fidelity coverage shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation. All such insurance coverage shall be written in the name of the Association. The expense of all insurance coverage obtained by the Association in accordance with this Section shall be a Common Expense.

11.02 Individual Insurance. By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner acknowledges that the Association has no obligation to provide any insurance for any portion of individual Lots and each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry all-risk casualty insurance on the Lot and all structures constructed thereon and a liability policy covering damage or injury occurring on a Lot. The casualty insurance shall cover loss or damage by fire and other hazards commonly insured under an all-risk policy, if reasonably available and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. The policies required hereunder shall be in effect at all times.

11.03 Damage and Destruction – Insured by Association. Not later than ninety (90) days after damage or destruction by fire or other casualty to any portion of any improvement covered by insurance written in the name of the Association, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Section, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty, allowing for any change or improvement necessitated by changes in applicable building codes. Any damage or destruction to property covered by insurance written in the name of the Association shall be repaired or reconstructed unless, within one hundred twenty (120) days after the casualty, a proposal not to repair or reconstruct such property is approved by at least seventy-five percent (75%) of the voting interests of the Members. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed one hundred eighty (180) days. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Members, levy a special Assessment against the Owner of each Lot. Additional Assessments may be made in a like manner, as necessary, at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited to the benefit of the Association. In the event that it should be determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, the property shall thereafter be maintained by the Association in a neat and attractive condition.

11.04 Damage and Destruction – Insured by Owners. The damage or destruction by fire or other casualty to all or any portion of any improvement on a Lot shall be repaired by the Owner thereof within ninety (90) days after such damage or destruction or, where repairs cannot be completed within ninety (90) days, they shall be commenced within such period and shall be completed within a reasonable time thereafter. Alternatively, the Owner may elect to demolish all improvements on the Lot and remove all debris therefrom within ninety (90) days after such damage or destruction.

ARTICLE TWELVE

Miscellaneous

12.01 **Savings.** If any provision or provisions of this Declaration, or any article, section, sentence, clause, phrase, or word herein, or the application thereof, is in any circumstances held invalid, the validity of the remainder of this Declaration and the application thereof shall not be affected thereby.

12.02 **Captions.** The captions in this Declaration are for convenience only and are not a part of this Declaration and do not in any way limit or amplify the terms and provisions of this Declaration.

12.03 **Applicable Law.** The laws of the State of Alabama shall govern this Declaration. All actions or proceedings in any way, manner or respect, arising out of or from or related to this Declaration shall be litigated only in courts having situs within the county in which the Subdivision is located. Each Owner hereby consents and submits to the jurisdiction of any local, state or federal court located within said county and state and hereby waives any rights it may have to transfer or change the venue of any such litigation. The prevailing party in any litigation in connection with this Declaration shall be entitled to recover from the other party all costs and expenses, including, without limitation, fees of attorneys and paralegals, incurred by such party in connection with any such litigation.

12.04 **Effect of Waiver or Consent.** A waiver or consent, express or implied, to or of any breach or default by any Person in the performance by that Person of its obligations hereunder is not a consent or waiver to or of any breach or default in the performance by that Person of the same or any other obligations of that Person. Failure on the part of a Person to complain of any act or to declare any Person in default hereunder, irrespective of how long that failure continues, does not constitute a waiver by that Person of its rights with respect to that default.

12.05 **Headings.** The headings and captions herein are used solely as a matter of convenience and shall not define, limit or expand any term or provision of this Declaration.

12.06 **Interpretation.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of a subdivision in accordance with Alabama law. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision or any other provision hereof.

12.07 **Notice.** All notices required or desired under this Declaration to be sent to the Association shall be sent certified mail, return receipt requested, by hand delivery or by a recognized overnight courier who maintains verification of delivery, to the Secretary of the Association, at such address as the Association may designate from time to time by notice in writing to all Owners. All notices to any Owner shall be delivered by hand deliver, by a recognized overnight courier who maintains verification of delivery in person, or sent by first (1st) class mail to the address of such Owner's Lot, or to such other address as he may have designated from time to time, in a writing duly received, to the Association.

12.08 **Conflict Between Documents.** In the event of any conflict or ambiguity between the terms, provisions, definitions, covenants and conditions set forth herein in this Declaration and the HOA Act, then the provisions of the HOA Act shall at all times control. If there is any conflict or inconsistency between the terms and conditions of this Declaration and the terms and conditions of the Certificate of Formation, the By-Laws or any rules and regulations promulgated hereunder, the terms and conditions of this Declaration shall control. If there is any conflict or inconsistency between the terms and conditions of the Certificate of Formation and the terms and conditions of the By-Laws or any rules and regulations promulgated hereunder, the terms and conditions of the Certificate of Formation shall control. If there is any conflict or inconsistency between the terms and conditions of the By-Laws and the terms and conditions of any rules and regulations promulgated hereunder, the terms and conditions of the By-Laws shall control.

IN WITNESS WHEREOF, the Declarant has executed this Declaration by and through its duly authorized representative as of this the 14TH day of MAY, 2020.

DECLARANT:

BAKER CLARK HOMES, INC.,
A Corporation

By: [Signature]
Its: Secretary/Treasurer

STATE OF ALABAMA

COUNTY OF BALDWIN

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Jas m A. Hens, whose name as Secretary/Treasurer of BAKER CLARK HOMES, INC., a Corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day, that being informed of the contents of said instrument, he/she, in his/her capacity as such officer and with full authority, executed the same voluntarily for and as the act of said Corporation on the day the same bears date.

Given under my hand and seal this the 14TH day of MAY, 2020.
[Signature]
NOTARY PUBLIC
My Commission Expires: August 13, 2022

PAULA DAUGHERTY KENNON
Notary Public, Alabama State At Large
My Commission Expires August 13, 2022

THIS INSTRUMENT PREPARED BY:

G. DAVID CHAPMAN III, P.C.
Attorney at Law
Post Office Box 1508
Gulf Shores, Alabama 36547
File 20.8873

EXHIBIT "A"
LEGAL DESCRIPTION

Commence at the Northeast corner of Section 23, Township 9 South, Range 3 East; run thence North 89 degrees 22 minutes 49 seconds West for 907.06 feet to the South right-of-way line of Dixie Graves Parkway; run thence South 86 degrees 24 minutes 20 seconds West for 675.17 feet along said Dixie Graves Parkway to the West line of a 50' right-of-way for the Point of Beginning; run thence South 01 degrees 09 minutes 24 seconds West along said right-of-way line for 1075.62 feet to the North right-of-way line of Brigadoon Trail; run thence along a curve to the right having a radius of 459.91 feet for an arc distance of 71.65 feet; run thence South 88 degrees 44 minutes 58 seconds West along said right-of-way for 429.86 feet; run thence along a curve to the left having a radius of 731.59 feet for an arc distance of 286.72 feet; run thence South 66 degrees 17 minutes 39 seconds West for 8.92 feet; run thence North 01 degrees 09 minutes 24 seconds East for 1093.19 feet to the South right-of-way of Dixie Graves Parkway; run thence along a curve to the right having a radius of 2130.95 feet for an arc distance of 249.77 feet; run thence North 86 degrees 24 minutes 20 seconds East for 540.23 feet to the West line of said 50' right-of-way and the Point of Beginning.