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B-26745

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, RESERVATIONS, RULES, LIENS, CHARGES AND EASEMENTS OF THE BLUFFS

KNOW ALL MEN BY THESE PRESENTS, THE BLUFFS, L.L.C., being the owners of all that certain real property known as The Bluffs, located in the County of Baldwin, State of Alabama, and more particularly described in those certain Vendor's Lien Deeds executed on the 27th day of January 1995 and recorded in the records of the office of the Judge of Probate of Baldwin County, Alabama at RP Book 612 Page 1722 et. seq. and RP Book 612 Page 1728 et. seq. have established a general plan for the improvement of such real property for the purpose of establishing a neighborhood residential in character and protective of the existing environment, do hereby establish the covenants, conditions, reservations, restrictions, and easements which all parcels and portions of such property shall be improved, sold and conveyed. Each and every one of these covenants, conditions, reservations and easements is for the benefit of each owner of land, or parcel thereof, derived from the above referenced lands and shall inure to and pass with each and every parcel of land derived from those referenced above and shall bind the respective successors in interest thereof.

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NOW, THEREFORE, the premises considered, and the owners intending that these covenants, conditions, restrictions, reservations, rules, liens, charges and easements be imposed on said lands and parcels therein and that all of the same are to be construed as restrictive covenants running with title to such land

and with each and every parcel thereof, the parties hereto declare as follows:

1. DEFINITIONS

1.1 "Association" shall mean and refer to The Bluffs Property Owners Association, Inc., its successors and assigns.

1.2 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a legal or equitable title to any parcel which is a part of the properties, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation.

1.3 "Properties" shall mean and refer to those certain parcels derived from the lands of The Bluffs shown on the Vendor's Lien Deeds recorded in Real Property Book 612 Page 1722 et seq. and Real Property Book 612 Page 1728 et seq.

1.4 "Common Area" shall mean all real property owned by or easements held by the Association for the common use and enjoyment of the Owners as designated from time to time.

1.5 "Parcel" shall mean and refer to any plot of land or parcel derived from the lands referred to above as owned by The Bluffs and comprising the properties.

1.6 "Declarant" shall mean and refer to The Bluffs, L.L.C., its successors and assigns.

1.7 "Committee" shall mean and refer to the Architectural Committee as herein established.

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2. PROPERTY OWNERS ASSOCIATION

The Bluffs Property Owners Association has been created by separate instrument. Each Parcel, and the Owners thereof, shall be subject to all the terms and provisions of the Association's governing documents, including, but not limited to, the following terms and provisions:

2.1 Membership. Each Owner shall by virtue thereof be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Parcel. Transfer of ownership of a Parcel, either voluntarily or by operation of law, shall terminate membership in the Association and said membership shall become vested in the transferee.

2.2 Voting. The Association shall have two (2) classes of voting membership:

Class A: Class A members shall consist of all Owners, with the exception of The Bluffs, L.L.C., and shall be entitled to one (1) vote for each Parcel owned. When more than one person holds an interest in any Parcel or said interest is split or divided in any fashion, all such persons shall be members. The vote for such Parcel shall be exercised as they determine, but may not be split, and shall be cast in the manner as provided by the By-Laws of the Association. In no event shall more than one (1) vote be cast with respect to any Parcel.

Class B: Class B members shall be The Bluffs, L.L.C., who shall be entitled to thirty-one votes until such time as ownership of all Parcels is transferred from The Bluffs, L.L.C.

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2.3 Assessments, Lien Established. Each owner by acceptance of a deed thereof, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

(1) Annual or other assessments or charges as may be set forth in the governing documents of the Association or as may be determined by the Association from time to time; and (2) Special assessments for capital improvements, such assessments to be established as provided in the governing documents of the Association, as amended from time to time, and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, with respect to each Parcel shall be a charge on, and a continuing lien against, such Parcel. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the Owners of such Parcel at the time the assessment became due. The personal obligation for delinquent assessments shall not pass to any Owner's successors in title unless expressly assumed by them.

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2.4 Date of Commencement of Annual Assessments; Due date. The annual assessments shall commence as to all Parcels as directed by the Association. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Association shall fix the amount of the annual assessment period and shall specify the due date thereof. Written notice of the annual assessment shall be sent to every Owner subject thereto. The Association shall, on demand, and for a reasonable charge,

furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified parcel have been paid.

2.5 Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within Thirty (30) days after the due date shall bear interest from the due date at the rate of interest specified in Ala. Code §8-8-10, as amended or superseded from time to time, or the maximum rate allowed by law, whichever is less. The Association may bring an action at law against any Owner personally obligated to pay the same, or foreclose the lien against the Parcel in a judicial proceeding instituted in a court of competent jurisdiction. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of any Common Area or abandonment of his Parcel. All reasonable legal expenses incurred by the Association in connection with the collection of unpaid assessments shall be paid by the Owner.

2.6 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Parcel shall not affect the assessment lien. No sale or transfer shall relieve such Parcel from liability for any assessments thereafter becoming due or from the lien thereof.

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3. ARCHITECTURAL COMMITTEE

3.1 Establishment. There is hereby established an Architectural Committee to ensure the safe, reasonable and proper

construction of improvement upon any parcel of The Bluffs. The said Architectural Committee (hereinafter referred to as the "Committee"), shall be composed of three (3) members and shall be appointed by the Board of Directors. No member of the Committee shall in any way be liable to any parcel owner or any act or any action or nonaction by the Committee or any member thereof in connection with these restrictions and covenants. The term of service of each member of said Committee shall be 3 years. In the event of the death, resignation, physical or mental incapacity of a member to serve as a member of the Committee, the remaining member or members shall have the right to appoint a successor for the remaining term.

3.2 Members. At the time of the filing of this instrument creating covenants, conditions, restrictions, reservations, rules, liens, charges and easements upon the individual parcels, the Architectural Committee, as provided for in Paragraph 2.1 of this instrument, shall be composed of the following named individuals who shall serve until their successors are appointed pursuant to Paragraph 3.1 of this instrument: William Barnhill, George R. Irvine, Jr. and Howard S. J. Walker, Jr., M.D.

3.3 Powers, Authorities, Responsibilities. The Architectural Committee is hereby vested, concurrent with the Directors of the Association, with the power to enforce these restrictive covenants as herein set forth according to the provisions of the restrictive covenants. Each and every parcel owner agrees to and shall by virtue of ownership of each parcel to be subject to the obligations

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and restrictions of these covenants as applied by the Committee. The Committee may seek remedies for breach of any of the covenants herein contained as provided for by Section 6. The Committee shall not be obligated to enforce each and every restriction herein or as amended.

3.4 Variances.

(1) The Architectural Committee may allow reasonable variances and adjustments of these conditions and restrictions in order to overcome practical difficulties and prevent unnecessary hardships in the application of the regulations contained herein; provided, however, that such shall be done in conformity with the intent and purposes hereof; and provided further, that any variance or adjustment will not be materially detrimental or injurious to other property or improvements in the development. Variances and adjustments in heights, size and setback requirements may be granted hereunder.

(2) In the event there are any governmental regulations which conflict with or prevent construction or improvements in the manner as required by these restrictions and regulations, those shall be deemed to constitute practical difficulties, justifying variances and adjustments of said regulations to prevent unnecessary hardship; provided, however, that the variance or adjustment shall not be materially detrimental or injurious to any property or improvements in the development.

3.5 Binding Arbitration. In the event any dispute arises between the Architectural Committee and any parcel Owner relating

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to these restrictions, then such dispute shall be submitted to a panel of three (3) architects, said panel to consist of one architect chosen by the Architectural Committee, one architect chosen by the parcel Owner, and one architect chosen by the two architects already chosen by the Committee and the Owner. The decision shall be binding upon the Committee and the parcel Owner. Expenses incurred in connection with this arbitration procedure shall be borne by the parcel Owner.

4. DURATION AND NATURE OF RESTRICTIONS

4.1 Duration of Restrictions. The covenants, conditions, restrictions, reservations, rules, liens, charges and easements herein contained are to run with the land and shall be binding upon all Owners and all persons claiming under them and shall inure to the benefit of, and shall be binding upon them and each of their heirs, executors, administrators and assigns until the first day of January 2015 the "primary period", at which time said covenants, terms, conditions, restrictions, and limitations, herein, unless otherwise herein specified, shall automatically be extended for successive periods of ten (10) years each. At any time after the primary period the covenants and restrictions herein may be amended or changed in whole or in part by the Owners of a majority of the parcels in the subdivision, but no change shall impose an unfair burden or restriction on the Owner of any parcel not joining in such amendment. At any time prior to the expiration of the primary period Class B members of The Bluffs Property Owners Association

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may amend or change these covenants, conditions, restrictions, reservations, rules, liens, charges and easements to more accurately conform to and reflect survey requirements and the intent of this instrument. Nothing in this paragraph shall be deemed to limit the duration of, or permit the modification of, other than as aforesaid, the easements and common areas provided for, which said easements and common areas shall be deemed to be perpetual.

4.2 Covenant to Run With Land. No parcel shall be conveyed, devised, leased or demised at any time hereafter, except as being subject to the covenants, terms, conditions, restrictions and limitations herein contained, or as modified, and the obligations to observe and perform the same; and whether or not it be so expressed in the deeds or other instruments of conveyance of the property, the same shall be absolutely subject to the covenants, terms, conditions, restrictions, and limitations herein contained which shall run with and be appurtenant to the lands and every part thereof, as fully as if expressly contained in proper and obligatory covenants or conditions, in each and every contract, deed or transfer and conveyance instruments thereof.

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5. BUILDING REQUIREMENTS AND RESTRICTIONS.

5.1 Residential Use Only. No parcel may be improved, used, or occupied for other than a single family private residence, and no flat, duplex, or apartment house or group apartment, though intended for residence purposes, may be erected on any parcel.

5.2 Offensive Activities, Etc.. No noxious, loud, offensive, or commercial activity of any kind, large or small, shall be permitted on any parcel nor shall anything be done thereon which may be or become an annoyance or a nuisance to the neighborhood.

5.3 Building Plans. No building shall be erected, placed or altered on any parcel until a copy of complete building plans, specifications and plot plans showing, without limitation, a schedule of exterior materials, exterior colors, and the location of such building, have been approved in writing by the Architectural Committee as to: (1) Location, orientation and finished ground elevation of the building with respect to roads and existing structures; (2) Conformity and harmony of external design with existing structures in, and general plans for, the neighborhood and (3) Compliance with all other requirements stated in these restrictions. The copy of such building plans, specifications, and plot plans submitted to the Committee will be retained by it. Should the Committee fail to approve or disapprove such plans and specifications within 30 days after submission, such approval will be deemed to have been granted. Such parcel shall be and remain in all other respects subject to these restrictions. If the plans and specifications are disapproved, written notice of such disapproval shall be given to the submitting parcel Owner. Such notice will set forth the elements disapproved but need not contain any suggestions as to corrective measures to be taken.

5.4 Location of Dwellings. Except as otherwise provided in this instrument, no dwelling or any part thereof, exclusive of

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steps or eaves, and no garage, servants' quarters or other detached structure, shall be located on any parcel nearer to the nearest right-of-way line of any road than 150 feet, nor 50 feet on any corner parcels, nor nearer to the property line of any other parcel in the neighborhood than 45 feet, unless the written consent of the Architectural Committee has been first obtained; provided, however, that should one building be constructed on two adjacent parcels, such building may occupy the adjacent 45 foot side yard set-back spaces of the two parcels.

5.5 Resubdivision. Once any parcel is transferred out of The Bluffs, L.L.C., there shall be no resubdivision of such parcel.

5.6 Clearing Vegetation. Natural vegetation shall not be disturbed except for removal of dead trees and vines. Reasonable vegetation may be cleared for the construction of the house, approved out buildings, front yard and access drive.

5.7 Air Conditioners and Heaters. No air conditioning or heating unit or equipment and structures related thereto shall be erected, operated, or permitted to remain upon any parcel between the side of any building or structure and the side property line of the parcel on which said building or structure is located unless enclosed in conformity with the general architecture of the primary building or structure or otherwise screened from view of the street and adjacent parcel.

5.8 Animals. Dogs, cats, and other domesticated animals in a total number not exceeding four may be kept by each parcel owner on each parcel owned provided they are not kept, bred or maintained

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for any commercial use or purpose. Horses shall be allowed, but shall not exceed one animal per three acres, and shall not exceed three animals on any parcel except with the written permission of the Homeowner's Association. There shall be no commercial boarding of any animals by any parcel owner.

5.9 Type and Size of Buildings. No primary residence structure shall be erected, placed or permitted to remain on any parcel other than one single family dwelling, which shall be not more than two and one-half stories plus basement in height and shall have heated area exclusive of basement, attics, open porches, carports and garages, of at least 1600 square feet of ground floor area if it is one story in height. If it is more than one story in height, such ground floor area shall have heated area of not less than 1000 square feet and shall have a total enclosed area of not less than 1800 square feet, exclusive of basements, open porches, carports and garages. A detached garage, guest quarters or servants' quarters or other outbuildings may be erected or permitted to remain upon any parcel if the written approval of the Architectural Committee is first obtained. Such out-buildings must be to the rear of the main residence. A weekender cabin of appropriate design and architectural standard will be allowed with each request to be individually approved. The square footage requirement does not apply.

5.10 Construction Materials. No exposed concrete block shall be utilized in construction of the exterior of any structures. All exposed window and window units shall be constructed of wood or

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primed and finished metal and must be specifically approved by the Committee. Bright aluminum window frames will not be approved. Each parcel owner shall provide appropriate electric service to service the improvements to such parcel. Each parcel owner must execute such agreements, if any, as the utility company may require to provide for underground service. Nothing herein shall be construed to prohibit overhead street lighting, security lighting or ornamental yard lighting, where serviced by underground by wires and cables.

5.11 Easements. Easements shall be designated from time to time and are hereby established as a part of these restrictions, and all parcels in the subdivision shall be subject to such easements for entry upon and construction, installation, maintenance, repair, and replacement of power, water, gas, sewer, telephone and other utility lines, equipment and facilities and drainage ditches, in, on, over, and under the road and easements associated therewith, and the Association shall have the right and easement, but not obligation, to enter upon and construct, install, establish, operate, maintain, repair and replace lights, walls, fences, shrubbery, bushes, trees and other decorative or screening improvements in, on, and under the easements established on and in said properties and parcels, with full right of ingress and egress to and from said easements across adjoining property; and the undersigned reserves unto itself and others for the doing of any or all of such things and the right to grant unto others such easements, rights, and privileges as the undersigned may deem

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appropriate or convenient in connection therewith.

5.12 Parking of Vehicles, Trailers, Etc.. No recreational vehicles, motor homes, travel trailers, campers, tents, etc. may be kept on any parcel without being in a completely enclosed building. None of the above nor any out building may be used for habitation either temporarily or permanently. No commercial vehicles of any kind may be parked on any parcel. Delivery type vehicles or pickup trucks, if such is used for personal transportation shall be allowed. Boats may be kept on a parcel if on a trailer. No mobile or manufactured home may be placed on any parcel for any purpose, except one used as an office during construction of the main residence.

5.13 Beautification and Maintenance of Parcels. Appropriate foundation plantings shall be established and maintained around front and sides of each dwelling, and grass or ground cover shall be planted or grass seed sown and maintained in any area that is cleared of natural vegetation. All parcels shall be maintained in a neat, attractive and presentable condition at all times.

5.14 Drilling. No drilling activity of any kind shall be allowed except for a water well. No mining or processing of minerals shall be allowed on any parcel.

5.15 Lighting. No floodlights shall be allowed to be directed toward street or adjacent parcels. Down lighting and up lighting are encouraged for outside lighting.

5.16 Fencing. Fencing and visual screens must be approved by the Architectural Committee. If owners elect to place fencing

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along access easement, such fence must be board fencing. Chain link fences or wire fences will not be allowed. Side and rear fencing is not favored.

5.17 Completion of Construction. Each dwelling or other building shall be completed within one year after commencement of construction unless completion is prevented by conditions found by the Architectural Committee to be beyond the control of the owner.

5.18 Swimming Pools. No swimming pools shall be constructed, placed, altered or maintained upon any parcel without the prior written approval of the Architectural Committee of the type, design and location thereof. Any such swimming pool must be enclosed by an adequate safety fence and must also be constructed, equipped and maintained in accordance with the requirements of the appropriate city, county, and state authorities.

5.19 Garbage Disposal Containers and Equipment. Unless otherwise required by garbage collection service, all outside garbage disposal containers must be placed in underground receptacles or other type receptacles approved by the Architectural Committee. All outside garbage disposal equipment and containers shall be kept in a clean and sanitary condition, and shall be shielded from view of street and adjacent parcels.

5.20 Clothes Lines. No outside clothes lines shall be permitted in the subdivision unless screened in such a manner as not to be visible from adjacent parcels and roads.

5.21 Signs. No sign of any kind shall be placed or maintained upon any parcel, except one sign of not more than seven (7) square

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feet advertising the property for sale, and signs used by builder during the construction period. One sign identifying the owner is permitted.

5.22 Mailboxes. All mailboxes shall be of such size and design as may be approved in writing by the Architectural Committee.

5.23 Satellite Dishes. No satellite dish shall be allowed in the front yard of any parcel, nor in the rear yard unless said dish is concealed from view by fence or shrubbery and first approved by the Architectural Committee. No Antenna will be allowed without approval of the Committee.

6. VIOLATION OF COVENANTS

6.1 Remedies On Breach. If there shall be any violation or attempted violation of any of these covenants, conditions, restrictions, reservations, rules, liens, charges and easements herein contained, it shall be lawful for the Committee, upon a vote of a majority of its members, in the name of The Bluffs Property Owners Association (the Association being named as the party plaintiff), and for any person or persons, in their individual names, owning any real property situated in The Bluffs to prosecute any proceeding at law or in equity against the person or persons violating or attempting to violate the same to prevent such person or persons from so doing, or continuing to do so, or to recover damages for such violations or attempted violations, including without limitation, the right to require the removal of any

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structure of improvement erected in violation hereof. The failure on the part of the Committee, or any other owners of property situated in the subdivision, to take action to enforce the aforesaid covenants, terms, conditions, restrictions and/or limitations shall under no condition be construed as a waiver of their respective right to do so and shall not constitute any form of estoppel shall be made in writing. Should the Association prevail in any action it shall be entitled to recover its attorney fees incurred in prosecuting its proceeding.

6.2 Remedies Cumulative. The remedies set forth in Paragraph 3 shall be cumulative and in addition to those set forth hereinabove.

7. MISCELLANEOUS

7.1 Partial Invalidity. The provisions of this declaration shall be deemed to be severable and neither the invalidation of any one of these covenants, terms, conditions, restrictions and/or limitations or any part thereof, by judgment or court order, nor the abandonment or waiver thereof, shall in any way affect any of the other provisions which shall remain in full force and effect.

7.2 Captions. The captions of the various paragraphs of this declaration are for convenience only and are not to be construed as a part of the terms or provisions hereof.

7.3 Notices. Whenever written notices are required to be sent or furnished, it shall be sufficient to send said notices by first class mail to the address of the Owner of the parcel

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reflected on the deed to said parcel or in the records of the Tax Assessor of Baldwin County, Alabama. Proof of the mailing of said notice properly addressed shall be sufficient to establish notice.

IN WITNESS WHEREOF, the undersigned, being the declarant and owners of all of the properties hereinabove described have hereunto their hands and seals on this 20th day of September 1995.

THE BLUFFS, L.L.C.

BY: George R. Irvine, Jr.
George R. Irvine, Jr.
As Its Co-Manager

BY: C. William Barnhill
C. William Barnhill
As Its Co-Manager

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STATE OF ALABAMA

COUNTY OF BALDWIN

I, Paige Moore, a Notary Public, in and for said County in said State, hereby certify that George R. Irvine, Jr., in his capacity as Co-Manager of THE BLUFFS, L.L.C., whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and seal this 20th day of September, 1995.

REL

Paige Moore
Notary Public, Alabama State at Large
My Commission Expires: 9-2-97

STATE OF ALABAMA

COUNTY OF BALDWIN

I, Paige Moore, a Notary Public, in and for said County in said State, hereby certify that C. William Barnhill, in his capacity as Co-Manager of THE BLUFFS, L.L.C., whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and seal this 20th day of September, 1995.

Paige Moore
Notary Public, Alabama State at Large
My Commission Expires: 9-2-97

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This document prepared by:
GEORGE R. IRVINE, III
Post Office Drawer 1509
Bay Minette, Alabama 36507

RECORD FEE 4.50
STATE OF ALABAMA
BALDWIN COUNTY
CERTIFY THIS INSTRUMENT WAS
FILED AND TAXES COLLECTED
SEP 22 12 47 PM '95