

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

KELLY SPRINGS SUBDIVISION

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made this 11th day of October, 2005, by KELLY SPRINGS DEVELOPMENT, LLC, an Alabama limited liability company (hereinafter referred to as the "Declarant").

WITNESSETH:

WHEREAS, Kelly Springs Development, L.L.C. is the owner of that real property described in the plat of Kelly Springs Subdivision (hereinafter referred to as Kelly Springs and/or the Property) and recorded in the Office of the Judge of Probate of Houston County, Alabama, in Plat Book 11, Page 72, all of the property lying and being in Houston County, Alabama;

WHEREAS, the Declarant desires to establish and enforce uniform standards of development quality and to provide for the effective preservation of the appearance, value, and amenities of Kelly Springs, which establishment, enforcement, and preservation shall benefit all owners of the property located thereon and, to that end, desire to subject said real property to the protective covenants, conditions, and restrictions herein contained, all of which are for the benefit of the said real property and the owners thereof; and

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

**ARTICLE I
DEFINITIONS**

1.1 "Annual Base Assessment" shall mean that assessment established by the Board of Directors to fund common expenses for the general benefit of all lots.

1.2 "Architectural Review Committee" shall mean and refer to a committee of three (3) or more individuals appointed by the Declarant, its successors and assigns. The purpose of this committee is to review all structures and lot improvements for conformance to the community design

standards, before, during, and after completion of the structure and lot improvements.

1.3 "Association" shall mean and refer to Kelly Springs Property Owners Association, Inc. and its successors and assigns.

1.4 "Benefited Assessment" shall mean an assessment specifically assessed against lots receiving benefits, items or services not provided to all lots within Kelly Springs including, by way of illustration and not limitation, those lots abutting the Perimeter Fence (as defined herein).

1.5 "Board" or "Board of Directors" shall mean and refer to the Board of Directors of the Association.

1.6 "Common Area" shall mean and refer to the Kelly Springs Property that is conveyed to the Association by the owners or Declarant or a part thereof and which is designated as an open space or area for the common use and enjoyment of the owners.

1.7 "Declarant" shall mean Kelly Springs Development, LLC, its successors or assigns.

1.8 "Declaration" shall mean this entire document as same may, from time to time, be amended or supplemented.

1.9 "Development" shall mean the property described as Kelly Springs Subdivision in this Declaration.

1.10 "Lot" shall mean and refer to the individual parcels of Kelly Springs Property designed, designated, or used for a residential purpose or use.

1.11 "Member" shall mean and refer to any person or other entity that is a member of the Association. Every lot owner shall be a member. Unless otherwise specified, any required vote of the members shall be computed by allowing each member the number of votes equal to the number of lots owned by such member.

1.12 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any lot or residence. "Owner" shall include the Declarant.

1.13 "Property" shall mean and refer to that part of Kelly Springs Property subjected to this Declaration and to such additional property as may hereinafter be annexed by subsequent amendment to this Declaration or which is owned or acquired by the Association.

1.14 "Protective Covenants" shall mean all of the Covenants, Conditions and Restrictions contained in this entire Declaration, together with any amendments thereto.

1.15 "Residence" or "Residential Property" shall mean a portion of the development designated on a subdivision plat for any type of independent use and occupancy as a residence by a single-family unit. "Residence" or "Residential Property" shall include all portions of the land owned as well as any structure thereon.

1.16 "Restrictions" shall mean and refer to the Covenants, Agreements, Easements, Charges, and liens created or imposed by this Declaration.

1.17 "Structure" or "Improvement" shall mean any thing or device, the placement of which on any lot may affect the appearance of such lot, including by way of illustration and not limitation, any building, garage, porch, shed, hedge or other type of landscaping, greenhouse, bathhouse, mailbox, swimming pool, any temporary or permanent living quarters, or any other temporary or permanent improvement to such lot. "Structure" or "Improvement" shall also mean any device or thing which affects or alters the natural flow of surface waters from, upon, or across any lot, or any change in the grade of any lot of more than six (6) inches from that existing at the time of purchase by the owner.

1.18 "Kelly Springs", "Kelly Springs Development", or "Kelly Springs Property" shall mean and refer to the property described as Kelly Springs in this Declaration.

ARTICLE II ARCHITECTURAL REVIEW COMMITTEE

The general architectural objective of the Declarant is to create parcels of residences constructed of traditional styles, and within architectural guidelines to be formulated by the Architectural Review Committee. The guidelines of the Architectural Review Committee will be designed to enhance the appearance of the entire Kelly Springs Development and maintain the value and integrity of the property within the development. The guidelines shall be made available to owners seeking to engage in development or construction upon any portion of the property subject to this Declaration.

2.1 Architectural Review Committee Membership, Appointment, and Removal. For so long as the Declarant is the owner of any lot within the development, the Declarant shall have the sole and exclusive right to appoint and remove all members of the Architectural Review Committee. If the Declarant is no longer the owner of any lot or dwelling within the development, the Declarant shall give notice to the Kelly Springs Property Owners Association, Inc. whose

Board of Directors shall then appoint the Architectural Review Committee. The Architectural Review Committee shall consist of three (3) or more individuals, none of which shall be required to be an owner, or to meet any other particular requirements. The term of the members of the Architectural Review Committee shall be at the discretion of the Declarant until control of the Architectural Review Committee is specifically delegated by the Declarant to Kelly Springs Property Owners Association, Inc.

2.2 Architectural Review Committee Authority. Except as hereinafter provided, the affirmative vote of a majority of the membership of the Architectural Review Committee shall be required in order to adopt any rule of regulation, or to make any findings, determinations, ruling, or to issue any permit, authorization or approval pursuant to directives or authorizations contained herein.

2.3 Approval Requirement. No Structure shall be commenced, erected, placed, moved on to or permitted to remain on any lot, nor shall any existing structure upon any lot be altered in any way which materially changes the exterior appearance thereof, nor shall any new use be commenced on any lot, unless three (3) sets of plans and specifications (including a description of any proposed new use) thereof shall have been submitted to and approved in writing by the Architectural Review Committee. Such plans and specifications shall be in such form and shall contain such information as may be required by the Architectural Review Committee, but in any event shall include:

- a. Architectural plans, elevations and specifications showing the nature, kind, exterior color schemes, shape, height and materials of all structures proposed for the lot;
- b. A site plan of the lot showing the location with respect to the particular lot (including proposed front, rear, and side setbacks) of all structures, the location thereof with reference to structures on adjoining portions of the property, and the number and location of all parking spaces and driveways on the lot;
- c. A grading plan for the particular lot;
- d. A drainage plan;
- e. A plan for landscaping; and
- f. Details of any fencing.

2.4 Basis for Disapproval of Plans. The Architectural Review Committee shall have the right to disapprove any plans and specifications submitted hereunder for any of the following but not limited to:

- a. Failure of such plans or specifications to comply with any of the restrictions contained herein;
- b. Failure to include information in such plans and specifications as may have been reasonably requested;
- c. Objection to the exterior design, appearance, or materials of any proposed structure;
- d. Objection to the location of any proposed structure upon any lot or with reference to other lots in the vicinity;
- e. Objection to the site plan, grading plan, drainage plan, or landscaping plan for any lot;
- f. Objection to the color scheme, finish, proportions, style of architecture, materials, height, bulk, or appropriateness of any proposed structure;
- g. Objection to parking areas proposed for any lot on the grounds of incompatibility to proposed uses and structures on such lot or the insufficiency of the size of parking areas in relation to the proposed use of the lot;
- h. Failure of plans to take into consideration the particular topography, vegetative characteristics, or natural environment; or
- i. Any other matter which, in the judgment of the Architectural Review Committee, would render the proposed structure(s) or uses inharmonious with the general plan of improvement of the lot or with structures or uses located upon other lots in the vicinity.

In any case where the Architectural Review Committee shall disapprove any plans and specifications submitted hereunder, or shall approve the same only as modified or upon specified conditions, the Architectural Review Committee shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal can be prepared and submitted for approval.

The scope of review by the Architectural Review Committee is limited to appearance only and does not include any responsibility or authority to review for structural soundness, compliance with building or zoning codes or standards, or any other factors.

2.5 Effect of Approval/Disapproval. Approval for use on any lot of any plans or specifications shall not be deemed a waiver of the Architectural Review Committee's right, in its discretion, to disapprove such plans or specifications or any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use on any other lot in Kelly Springs. Approval of any such plans and specifications relating to any lot, however, shall be final as to that lot.

2.6 Time for Approval. In the event that the Architectural Review Committee fails to approve or disapprove any plans and specifications as herein provided within thirty (30) days after submission thereof, the same shall be deemed to have been approved, as submitted, and no further action is required.

2.7 Failure to Obtain Approval. If any structure shall be altered, erected, placed or maintained upon any lot, or any new use commenced on any lot, otherwise than in accordance with plans and specifications approved by the Architectural Review Committee pursuant to the provisions of this Article II, such alteration, erection, maintenance or use shall be deemed to have been undertaken in violation of this Article II, and without the approval required herein, and upon written notice from the Architectural Review Committee, any such structure so altered, erected, placed or maintained upon any lot in violation hereof shall be removed or re-altered, and any such use shall be terminated, so as to extinguish such violation.

2.8 Enforcement of Provisions. The Architectural Review Committee may enforce the provisions of this Declaration regarding Architectural Control, any guidelines formulated by the Architectural Review Committee or other regulations pertaining to Architectural Control by initiation of an action for damages and/or injunctive relief and/or specific performance, and in the event an action at law or in equity is brought or initiated by the Architectural Review Committee, the Architectural Review Committee shall be entitled to recover a reasonable attorney's fee in addition to any other relief which may be awarded as a result of such action.

2.9 Retention of Copy of Plans. Upon approval by the Architectural Review Committee of any such plans and specifications submitted hereunder, a copy of such plans and specifications, as approved, shall be deposited for permanent record with the Architectural Review Committee, and one set of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same.

2.10 Waiver of Liability. Neither the Architectural Review Committee nor any individual member thereof, nor the Kelly Springs Property Owners Association, Inc., nor the Declarant, nor any agent, servant or employee of the foregoing, shall be liable in any way to any owner or to any other party for any

failure of structures to comply with 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.

ARTICLE III SITE DEVELOPMENT

3.1 Site Preparation Requirements. After the plan for the structure is approved, the site of the structure must be staked out and such site approved by the Architectural Review Committee before any tree cutting is done. Existing vegetation on each lot shall be saved whenever it is practical to do so. All areas on the site and outside the areas of disturbance shall be "corded off" with high visibility surveyor's flagging tape and no vegetation shall be removed from corded areas and no materials may be stored over the roots of this vegetation without prior approval of the Architectural Review Committee. Removal of "underbrush" from the corded areas is expressly prohibited except on Architectural Review Committee approval.

3.2 Tree Removal. No tree may be cut or removed from any lot without consent of the Architectural Review Committee and until the Architectural Review Committee approves the building plans, site plans, and site staking.

3.3 Erosion Control. Erosion permits and control measures shall be taken by the owner of a lot, or owner's contractors, to protect adjacent properties including roads and streams during construction on such lot and thereafter until the soil is stabilized on the lot. This may be accomplished by obtaining permits from appropriate authorities and the use of silt fencing or other protective measures intended to intercept and filter the excess storm water runoff from the lot.

3.4 Utility Lines and Appurtenances. All gas, water, sewer, telephone, and electrical feeder and service lines shall be installed as underground service unless otherwise approved by the Architectural Review Committee. All transformer boxes, meters, or other such fixtures shall be adequately screened with plants or other materials approved by the Architectural Review Committee provided that no planting or screening devices shall be placed so as to obstruct the normal servicing of these fixtures.

3.5 Connection Points for Utility Service Lines. To the extent of the interests of the owner of each lot, such owners agree to connect utility service lines (including, but not limited to, gas, water, sewer and electricity) at points designated by the Declarant.

3.6 Sanitary Sewer Service Lines. The material for sanitary sewer service lines must be approved by the Architectural Review Committee and cast iron may be required in some or all sections of the property.

3.7 Architectural Styles. All exterior building materials must be of colors approved by the Architectural Review Committee. The architecture on each lot must be, in the opinion of the Architectural Review Committee, compatible with the overall natural setting of the Kelly Springs Development and with the surrounding structures.

3.8 Exterior Lighting. Exterior lighting plans must be set forth on the Architectural or Landscape plans for a lot, and must be approved by the Architectural Review Committee. Exterior lighting shall be "environmental type" which directs all light beams downward with no spillover light or glare emitted off-site and shall be compatible with lighting used on other residential structures in Kelly Springs Development.

3.9 Landscaping. The landscaping plan must be approved by the Architectural Review Committee prior to any site disturbance. The landscape plan shall indicate the proposed type, location, size and quantity of all plant materials to be planted on the lot. The owner must execute the landscape plan as submitted to and approved by the Architectural Review Committee within thirty (30) days after occupancy.

Residential landscaping should enhance the privacy of the residential structures. However, it is essential that the rights-of-way and common property areas be maintained without strict definition of property lines. It is also desirable that the natural ground cover of the land weaves throughout the residential development. Therefore, the Architectural Review Committee shall closely scrutinize the proposed construction of any fence, wall, or hedge before such is allowed upon any lot.

It is the intent of this section in the Site Development Article to assure that a beautiful natural setting is maintained on the Kelly Springs Property. Each structure and the landscaping of each lot is a part of that setting and should serve to enhance, not detract from, that setting.

ARTICLE IV GENERAL COVENANTS AND RESTRICTIONS

✓ 4.1 General Prohibitions. Without the prior written approval of the Architectural Review Committee:

- a. No previously approved structure on any lot shall be used for any purpose other than that for which it was originally designed;
- b. To the extent of the interest of the owner of a lot, no facilities, including poles and wires for the transmission of electricity, telephone messages, and the like, shall be placed or maintained above the surface of the ground of any lot;
- c. No satellite dishes or external or outside antennas shall be placed on any lot.
- d. No wall, mailbox, fence, swimming pool, basketball goal, clothesline or other structure of any type shall be commenced, erected, altered, or placed on any lot.
- e. No boat, boat trailer, house trailer, trailer, motor home, motorcycle, golf cart, or any similar items shall be stored in the open on any lot for a period of time in excess of twenty-four (24) hours.
- f. Material specifications shall be in accordance with the Design Guidelines for Kelly Springs Subdivision.
- g. Building Setbacks: No building shall be located on any lot nearer than 25 feet to the front lot lines (no building shall front Kelly Springs Road or Barrington Road), 25 feet to any side street line, 10 feet to any interior lot lines, or 40 feet to any rear lot line. The building, including porches and chimneys, shall not encroach into the building setbacks.
- h. Height: The main floor ceiling height of primary living and bedroom spaces shall be 9 feet minimum. Any second floor shall have a ceiling height of 8 feet minimum.
- i. Garages: Each house shall have a minimum of a two-car garage. No carports are allowed.
- j. Sight Distance at Intersection: No fence, wall, edge, or shrub planting which obstructs sight lines at elevations between two and six feet above the roadway section of a street property line with the edge of a driveway shall be permitted. No trees shall be permitted to remain within such distance of such intersection unless the foliage line is maintained at sufficient height to prevent obstruction of such lines.

- k. Drying of Laundry: No structure or apparatus may be constructed for the outdoor drying of laundry or wash.
- l. Excavations: No excavating, except such as is necessary for the construction of improvements, shall be permitted.
- l. Oil and Mining Operations: No oil drilling, oil development operations of any kind shall be permitted upon or in any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.

4.2 Residential Use and Size. No lot shall be used except for a private, single-family dwelling not to exceed three (3) stories in height used for residential purposes. The heated and cooled area of the main structure, exclusive of porches, garages, and carports, shall not be less than 2,000 square feet.

4.3 Animals. No livestock, fowl, insects, or animal of any kind shall be raised, kept, or bred on any lot, except that ordinary domestic pets may be kept provided they are not kept, bred, or maintained for any commercial purpose. However, any such animal must always be under the complete control of its owner, and under no circumstances may any animal be allowed to run loose on Kelly Springs Property. If the owner of any such animal allows the animal upon any of the common areas of Kelly Springs Property, then said owner shall be responsible for removing and disposing of any waste from said animal.

4.4 Signs. No sign of any kind shall be erected or displayed to the public view on any lot except a professional sign of not more than one (1) square foot during the construction of the structure on said lot, or one (1) sign of not more than five (5) square feet advertising the lot for sale.

4.5 Accumulation of Refuse. No lumber, metals, or bulk materials shall be kept, stored, or allowed to accumulate on any part of the properties except building materials during the course of construction of any approved structure. Builders must provide dumpsters on the property during the construction period. No harmful materials shall be stored, either inside any structure, or outside any structure on any lot, if said materials pose any significant threat to public health and safety. Trash or other refuse to be disposed of by being picked up and carried away on a regular and recurring basis shall be placed in containers and may be placed in the open on any day a pick-up is to be made. At all other times, trash and garbage containers shall be screened in such a manner so that they cannot be seen from adjacent and surrounding properties, and as approved by the Architectural Review Committee. All trash and garbage containers shall

be kept in a clean and sanitary condition. The Architectural Review Committee, in its discretion, may adopt and implement reasonable rules and regulations relating to the size, shape, color, and type of containers permitted.

4.6 Temporary Toilet Facilities. Builders must provide appropriate, temporary toilet facilities for use during construction.

4.7 Pipes. To the extent of the interest of the owners of a lot, no water pipe, gas pipe, sewer pipe, or drainage pipe shall be installed or maintained on any lot above the surface of the ground except hoses and movable pipes used for irrigation purposes and any back flow preventer. Meters and valves for utilities shall be located underground, if feasible. If such meters and valves must be placed above ground, they shall be located at points approved in writing by the Architectural Review Committee, and proper screening shall be required. Under no circumstances will storm water pipes be allowed to empty into the lake without prior Architectural Review Committee approval.

4.8 Outside Burning. Outside or open burning of trash, refuse, or other material upon any property is prohibited.

✓ 4.9 Machinery. No machinery shall be placed or operated on any lot except such machinery as is usual in maintenance of a private residence.

4.10 Nuisance. No obnoxious, offensive, or illegal activities shall be carried on upon any property; nor shall anything be done on any property that may be or may become an annoyance or nuisance to the neighborhood.

4.11 Discharge. No chemicals, oil, gasoline, or other hydrocarbon substance shall be discharged on any lot, roadway or common area.

4.12 Damage to Improvements. If there are any damages to the curbs, gutters and/or sidewalks during the construction and building period, the contractor and/or owner shall be responsible for the repair of any damages incurred at their sole cost.

ARTICLE V COVENANTS FOR MAINTENANCE

5.1 Maintenance of Residence. Each owner shall keep all lots owned by him, and all improvements therein or thereon, in good order and repair, including the seeding, watering and mowing of all lawns, the pruning and cutting of all trees and shrubbery, and the painting (or other appropriate external care) of

all buildings and other structures, all in a manner and with such frequency as is consistent with good property management.

5.2 Enforcement of Maintenance. The Kelly Springs Property Owners Association shall have the right, but not the obligation, to enter upon any residence and trim or prune, at the expense of the owner, any hedge or other planting which, in the opinion of the Kelly Springs Property Owners Association, Inc., is unattractive in appearance; provided, however, that the owner shall be given fifteen (15) days' prior written notice of such action.

ARTICLE VI EASEMENTS

6.1 Road Easements. The Declarant hereby expressly reserves unto itself and to its successors, assigns, and invitees, forever, a non-exclusive perpetual road easement on, over, across and upon the roadways shown on the recorded plat of Kelly Springs Subdivision.

6.2 Utility Easements. The Declarant reserves unto itself, its successors and assigns, a perpetual, non-exclusive easement and right, on, over, across, and under the ground to erect, maintain, and use electric and telephone wires, cables, conduits, sewers, water mains, and other suitable equipment for the conveyance and use of electricity, telephone, gas, sewage, water, or other public conveniences or utilities, and such other easements as are shown on the recorded plat of Kelly Springs Subdivision. The easements expressly include the right to cut any trees, bushes, shrubs, hedges, etc. and include the right to grade, ditch, and any like action reasonably necessary to provide economical utility installation.

6.3 Fence and Entry Gate Easements. The Declarant hereby expressly reserves unto itself and to its successors, assigns, and invitees, forever a ten foot (10') wide perpetual easement for the installation, maintenance, repair, replacement and continued existence of a perimeter privacy fence ("Common Privacy Fence") measured from and along the rear lot line of Lots 19 through 37, Block "A", and Lots 1 through 6 and 13 through 15, Block "C", of the plat of Kelly Spring Subdivision. The Declarant also hereby expressly reserves unto itself and to its successors, assigns, and invitees, forever a ten foot (10') wide perpetual easement for the installation, maintenance, repair, replacement and continued existence of a decorative entry gate and colonnade ("Entry Gate") measured from and along the rear and side lot line of Lots 1 and 37, Block "A", and Lots 1 and 23, Block "C" of the plat of Kelly Spring Subdivision.

6.3 Entry Easements. Declarant reserves for the Association and Declarant an easement across every Lot, and the Association and Declarant

shall have the right to enter upon any Lot for any of the purposes in this Declaration in order to exercise, enjoy and carry out any and all of the rights and powers of the Association stated in this Declaration. Entry upon any Lot shall not be deemed a trespass, and the Association and Declarant shall not be liable for any damage so created unless such damage is caused by the willful misconduct or negligence of the party against whom damages are sought to be collected.

6.4 Grading. The Declarant may, at any time, make such cuts and fills upon any lot or other part of the Kelly Springs Property and do such grading and moving of earth as, in its judgment, may be necessary to improve or maintain the streets in or adjacent to the Kelly Springs Property and to drain surface waters there from.

6.5 Owner's Easements of Enjoyment. Every owner of a lot shall have a right of use and enjoyment in and to the common areas which said right of use and enjoyment shall be appurtenant to and shall pass with the title for every lot subject to the following provisions:

- a. The right of the Association, from time to time, to make and amend reasonable regulations concerning the use of the common areas; and
- b. The right of the Association to suspend the voting rights and right of use and enjoyment of the recreational facilities on any common area by any owner for any period during which any assessment against said owner's lot remains unpaid.

ARTICLE VII COMMON AREAS

Every Owner, by reason of such ownership, shall have a right and easement of enjoyment in and to the common areas, and such easement shall be appurtenant to and shall pass with every lot upon transfer. All such rights, easements, and privileges, however, shall be subject to the right of the Kelly Springs Property Owners Association, Inc. to adopt and promulgate reasonable rules and regulations pertaining to the use of common areas which shall enhance the preservation of such areas, the safety and convenience of the users thereof, or which, in the discretion of the Board, shall serve to promote the best interests of the owners.

All owners shall be subject to the following restrictions regarding all common areas in Kelly Springs Development Subdivision:

- a. No child under the age of thirteen (13) shall be allowed in any common area without adult supervision.

- b. No motorcycles, four wheelers, go-carts, or other motorized recreational or all-terrain vehicles allowed in any common area.

ARTICLE VIII ASSESSMENT OF ANNUAL CHARGE

8.1 Personal Obligation of Members. The owner of any lot by acceptance of a deed or other conveyance for such lot, whether or not it shall be expressed in such deed or other conveyance, shall be deemed to covenant and agrees to pay to the Association such fees that are assessed by the Declarant, its successors and assigns, and/or the Kelly Springs Property Owners Association, and agrees that non-payment of such fees creates a lien on the owner's lot.

8.2 Assessment. Owners shall in each year be assessed against the assessable property a charge equal to a specified number of dollars per lot, commencing upon the Date of Commencement (as defined herein). It is specifically understood and represented that the utility charges to each lot, including cable, sewer, water, electricity, telephone, gas (if any) and other utilities are the separate and personal responsibility of the lot owner and are not part of any assessments provided for herein.

8.3 Purpose of Assessments. The assessments levied by the Kelly Springs Property Owners Association, Inc. shall be for the general purposes of promoting the recreation, health, safety, welfare, common benefits, and enjoyment of the owners and occupants in Kelly Springs, and for the improvement and maintenance of the Common Areas, landscaped medians, the Entry Gate, and the Common Privacy Fence, as may be more specifically authorized by the Board.

8.4 Types of Assessments. There are hereby created assessments for Association expenses as the Board may specifically authorize from time to time. There shall be three types of assessments: a) the Base Annual Assessment; b) Benefited Assessments; and c) Special Assessments, all of which are described herein. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Kelly Springs Property, is deemed to covenant and agrees to pay these assessments.

8.5 Base Annual Assessment. The Base Annual Assessment shall be used to fund Common Expenses for the general benefit of all lots. The Base Annual Assessment shall be paid in quarterly installments.

8.6 Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Any Special Assessment shall require the affirmative vote or written consent of members holding at least fifty-one (51) percent of the total votes, and the affirmative vote or written consent of the Class "B" member, if such exists. Special Assessments shall be payable in such manner and at such times as determined by the Board and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

8.7 Benefited Assessments. The Association shall have the power to specifically assess expenses of the Association: a) against lots receiving benefits, items, or services not provided to all lots within Kelly Springs; and b) against any lot to reimburse the Association for costs incurred in bringing the lot into compliance with the provisions of the Declaration.

8.8 Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each lot on the first day of the month following: a) the month that is six months following the initial transfer of the lot by the Declarant to any Owner, or b) the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later ("Date of Commencement"). The first Annual Base Assessment levied on each lot shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the lot.

8.9 Assessment Notice. As soon as may be practical in each year, the Kelly Springs Property Owners Association, Inc. shall send a written bill to each member stating the amount of the Base Annual Charge as well as any other assessments assessed against each such lot, stated in terms of the total sum due, and that unless the member shall pay the Base Annual Charge within thirty (30) days following the date of receipt of the bill, the same shall be deemed delinquent and will bear interest at the rate of twelve percent (12%) per annum until paid.

8.10 Base Annual Assessment Amount. The amount of the Base Annual Assessment shall be established annually by the Kelly Springs Property Owners Association, Inc. The amount of any Benefited Assessment shall be established, as required, by the Kelly Springs Property Owners Association, Inc.

8.11 Creation of Lien and Personal Obligation for Assessments. If a member shall fail to pay any assessments within sixty (60) days following receipt of the bill referred to in Section 8.9 hereof, and within thirty (30) days after additional written notice that the member is delinquent in his payment, in addition to the right to sue the member for a personal judgment, the Kelly Springs Property Owners Association, Inc., shall have the right to enforce a lien on said property. All assessments, together with interest (at a rate not to exceed the

highest rate allowed by Alabama Law), as computed from the date the delinquency first occurs, late charges, costs, and reasonable attorney's fees, shall be a charge and continuing lien upon each lot against which the assessment is made until paid. Each such assessment, together with interest, late charges, costs and reasonable attorney's fees also shall be the personal obligation to the person who was the owner of such lot at the time the assessment arose. Upon a transfer of title to a lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no Mortgagee who obtains title to said lot by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

8.12 Obligations of the Association with Respect to Funds. The Kelly Springs Property Owners Association, Inc. shall not be obligated to spend in any calendar year all the sums collected in such year by way of the Base Annual Assessment or any other assessment, and may carry forward as surplus any balances remaining; nor shall Kelly Springs Property Owners Association, Inc. be obligated to apply any such surpluses to the reduction of the amount of the Base Annual Assessment in the succeeding year, but may carry forward from year to year such surplus as the Board in its absolute discretion may determine to be desirable for the greater financial security of Kelly Springs Property Owners Association, Inc. and the effectuation of its purposes. The Kelly Springs Property Owners Association, Inc. shall provide access, to all members of the Kelly Springs Property Owners Association, Inc., to annual accounting of funds expended and balances remaining.

ARTICLE IX KELLY SPRINGS PROPERTY OWNERS ASSOCIATION, INC.

9.1 The Association. The Declarant shall cause to be formed an association to be known as Kelly Springs Property Owners Association, Inc., with the powers and duties as set forth below. Any purchaser of any lot in Kelly Springs is deemed to have consented specifically to this provision and does specifically agree to comply with the provisions as set out herein.

9.2 Membership. Every owner of a lot, by virtue of such ownership, shall be a member of the Kelly Springs Property Owners Association, Inc. No owner, whether one or more persons, shall have more than one (1) membership per lot owned. If a lot is owned by more than one person, all co-owners shall be entitled to the privileges of membership; however, there shall be only one vote per lot. All such co-owners shall be jointly and severally obligated to perform the responsibilities of owners hereunder.

9.3 Voting Rights. The Association shall have two (2) classes of membership: Class "A" members and Class "B" members, which are as follows:

- a. Class "A" members shall be the owners with the exception of Class "B" members, if any. Class "A" members shall be entitled to one (1) vote in the Association of each lot owned. When more than one person is the owner of any lot, the vote for such lot shall be exercised as those persons or entities themselves determine and advise the secretary of the Association prior to any meeting. In the absence of such advice, the lot's vote shall be suspended in the event more than one person seeks to exercise it.
- b. Class "B" member shall be the Declarant and any successor Declarant who takes title for the purpose of development and sale, and who is designated as such in a recorded instrument executed by the Declarant. The Class "B" member shall be a voting member and shall be entitled to cast the number of votes which are contained in the total number of votes of Class "A" members plus one (1) vote until such time when Class "B" votes terminate and convert to Class "A" votes.

9.4 Termination of Class "B" Membership. The Class "B" membership shall terminate and be converted to Class "A" membership upon the happening of the earlier of the following:

- a. The expiration of fifteen (15) years after the date of the recording of this Declaration.
- b. When the Declarant so determines.

From and after the happening of these events, whichever occurs earlier, the Class "B" member shall be deemed to be a Class "A" member. At such time, the Declarant shall call a meeting to advise the membership of the termination of Class "B" status and to elect the members of the Board of Directors.

9.5 Place of Meetings. Meetings of the Association shall be held at such suitable place convenient to the members as may be designated by the Board of Directors either within the properties or as convenient thereto as possible and practical.

9.6 Annual Meeting. The first regular annual meeting of the Association shall be held within one (1) year from the date of the incorporation of the Association. Subsequent regular annual meetings shall be set by the Board so as to occur within thirty (30) days of the same day of the same month of each year thereafter at an hour set by the Board.

9.7. Special Meetings. The President may call special meetings. A written notice stating the date, time, place, and purpose of the meeting shall be delivered, either personally or by United States Mail, to each member.

9.8 Waiver of Notice. Waiver of notice of a meeting of the Association shall be deemed the equivalent of proper notice.

9.9 Proxy. Members of the Association may vote by proxy.

9.10 Quorum. Except otherwise provided in this Declaration, the presence, in person or by proxy, of members representing one-third (1/3) of the Association shall constitute a quorum at all meetings of the Association. However, until Class "B" membership converts to Class "A" membership, a quorum will not exist without the presence of the Declarant, its successors, or assigns.

9.11 Officers. The officers of the Association shall be a President, Vice-President, Secretary, and Treasurer. The officers of the Association shall be elected annually by the Board of Directors at the first meeting of the Board of Directors following each annual meeting of the Association.

9.12 Conduct of Meetings. The President shall preside over all meetings of the Association. In the absence of the President, the Vice-President shall preside. The secretary shall keep the minutes of the meeting and record, in a minute book, all resolutions adopted at the meeting as well as a record of all transactions occurring.

ARTICLE X BOARD OF DIRECTORS

The affairs of the Kelly Springs Property Owners Association, Inc. shall be managed by a Board of Directors of not less than three (3) individuals. The Declarant shall have the right to appoint or remove any member or members of the Board of Directors until such time as the Class "B" membership shall terminate. Each owner, by acceptance of a deed or other conveyance of property within Kelly Springs, vests in Declarant such authority to appoint and remove Directors of the Association.

10.1. Authority of Board of Directors. The Board of Directors is hereby empowered to promulgate and enforce a general standard of behavior and use of properties within Kelly Springs. Therefore, the Board of Directors is hereinafter empowered to enforce the following general restrictions as set forth in the policy for enforcement herein. The Board of Directors of the Kelly Springs Property Owners Association, Inc. shall have the following duties, rights, and powers:

- a. To adopt rules for the regulation and operation of the Kelly Springs Property and to change, modify, or adjust, from time to time, the different and various classifications of Annual Charges.
- b. To levy and collect Annual Charges and any other charges against and from owners; to collect delinquent Annual Charges and any other charges by suit or otherwise; and to collect such other fees as are herein authorized.
- c. From the funds collected, to provide for maintenance, management, insurance and other expenses pursuant to its obligations.
- d. To lease, acquire, and sell real and personal property pursuant to its obligations.
- e. To enter upon the lots when necessary in connection with the duties outlined in these covenants.
- f. To enjoin or seek damages from the owners of the lots in Kelly Springs for violation of these covenants or violation of any of the rules of said Association.
- g. To suspend the voting rights and the right to use areas of the Kelly Springs Property by a delinquent owner.
- h. To make and amend rules and regulations.
- i. To prepare a budget covering estimated common expenses during the coming year.
- j. To perform any task necessary to lawfully carry out these covenants or any of the rules of the Association.

As long as there exists a Class "B" membership, no action authorized by the Board of Directors shall become effective, nor shall any action, policy, or program be implemented until the Declarant is notified and given the opportunity to make its concerns, thoughts, and suggestions known to the members of the Association and/or the Board.

10.2 Meetings. Meetings of the Board of Directors shall be held at such time and place as shall be determined, from time to time, by a majority of the Directors.

10.3 Waiver of Notice. Any Director may waive notice of a meeting before or after the meeting and such waiver shall be deemed the equivalent of proper notice.

10.4 Quorum. A quorum at Directors' meetings shall consist of the Directors entitled to cast a majority of the vote of the entire Board of Directors. The acts of the Board approved by a majority of votes present at a meeting at which a quorum is present shall constitute the acts of the Board of Directors.

10.5 Conduct of Meetings. The President shall preside over all meetings of the Board of Directors, and the secretary shall keep a minute book of the meetings. In the event of the absence of the President, the Vice-President shall preside.

ARTICLE XI GENERAL PROVISIONS

11.1 Grantee's Acceptance. The grantee of any lot subject to the coverage of these Restrictions, by acceptance of the deed or other instrument conveying an interest in or title to, or the execution of a contract for the purchase thereof, whether from the Declarant or a subsequent owner of such lot, shall accept such deed or other contract upon and subject to each of these Restrictions herein contained.

11.2 Duration. The Restrictions contained in this Declaration shall run with and bind the property, shall inure to the benefit of and shall be enforceable by the Declarant, the Kelly Springs Property Owners Association, Inc., the Architectural Review Committee, and the owner of any Residential lot included in Kelly Springs Property, their respective legal representatives, heirs, successors and assigns for a period of twenty-five (25) years from the date these covenants are recorded, after which time said Restrictions shall be automatically extended for successive periods of ten (10) years. After the said period of twenty-five (25) years, this Declaration may be amended and/or terminated in its entirety by an instrument signed by not less than fifty-five (55) percent of the lot owners which instrument shall be filed for recording in the Probate Office of Houston County, Alabama; or in such other place of recording as may be appropriate at the time of the execution of such instrument.

11.3 Enforcement. In the event of a violation or breach of any of these Restrictions or any amendments thereto by any owner, or employee, or agent, then the owner(s) of residential lot(s), the Kelly Springs Property Owners Association, Inc., the Declarant (so long as it is a member of the Kelly Springs Property Owners Association, Inc.), their successors and assigns, or any party to whose benefit these Restrictions inure shall have the right to proceed at law or in equity to compel compliance with the terms and conditions hereof, to prevent the

violation or breach of said Restrictions, or such other legal remedy it may deem appropriate. If the party attempting to enforce these restrictions shall prevail in any proceeding at law or at equity, such party shall be entitled to recover reasonable attorney fees and court costs, which will be assessed against the party which is found to be in violation of such restrictions.

11.4 Amendment.

- a. Until the first lot is conveyed by the Declarant to a purchaser, the Declarant may unilaterally amend this Declaration for any purpose. Thereafter, the Declarant may unilaterally amend this Declaration if such amendment is necessary to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination.
- b. Thereafter and otherwise, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of sixty-seven (67) percent of the total Class "A" votes in the Association, and the consent of the Declarant.

No amendment may remove, revoke, or modify any right or privilege of the Declarant without the written consent of the Declarant or the assignee of such right or privilege. To be effective, any amendment must be recorded in the public records of Houston County, Alabama.

11.5 Indemnity for Damages. Each and every lot owner and future lot owner, in accepting a deed or contract for any lot subject to these Restrictions, agrees to indemnify Declarant for any damage caused by such owner, or the contractor, agent, or employees of such owner, to roads, streets, gutters, walkways, or other aspects of public ways, including all surfacing thereon, or to water, drainage, or storm sewer lines or sanitary sewer lines owned by the Declarant, or for which the Declarant has responsibility, at the time of such damage.

11.6 Severability. Every one of the provisions and restrictions is hereby declared to be independent of, and severable from the rest of the provisions and restrictions and of and from every other one of the provisions and restrictions and of and from every combination of the provisions and restrictions in this Declaration and shall in no way affect any of the other provisions or restrictions which shall remain in full force and effect.

11.7 Notices. Any notice required to be sent to any owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed by United States Mail, postage prepaid, to the street address of the lot

owned by such owner or the address as it last appeared on the records of the Association.

11.8 Captions. The captions and titles of the various Articles and Sections in the Declaration are for convenience of reference only, and in no way define, limit or describe the scope or intent of this Declaration.

11.9 Effective Date. This Declaration shall become effective upon its recordation in the Office of the Judge of Probate of Houston County, Alabama.

[signature page to follow]

DECLARANT

KELLY SPRINGS DEVELOPMENT, LLC

By: Sam B. Marley
Sam B. Marley
Its: Manager

STATE OF ALABAMA)
HOUSTON COUNTY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Sam B. Marley, as Manager, of Kelly Springs Development, LLC, a limited liability company, whose name is signed to the foregoing, and who is known to me, acknowledged before me on this day, that, being informed of the contents of the foregoing, he in his capacity as such Manager, executed the same voluntarily on the date the same bears date.

Given under my hand and official seal this the 11th day of October, 2005.

Greg S. Steyer
Notary Public
My Commission Expires: 7-15-08

F:\ed\Marley Sam\Kelly Springs\Declaration of Covenants, Condition & Restrictions