

STATE OF ALABAMA  
COUNTY OF MOBILE

DECLARATION OF RESTRICTIVE COVENANTS AND PROPERTY OWNERS ASSOCIATION  
AGREEMENT

FOR

**DEER CREST UNIT III**

KNOW ALL MEN BY THESE PRESENT, that this Declaration of Restrictions and Covenants is made, adopted, published and declared this the 30<sup>th</sup> day of December, 2020, by Powers Investments LLC, hereinafter sometimes referred to as “Developer”;

WITNESSETH:

WHEREAS, the undersigned is the Developer of the real property in the County of Mobile, Alabama, and described as follows:

**Deer Crest, Unit III, as per plat recorded in Instrument # 2020079584 on December 30, 2020, in the office of the Judge of Probate of Mobile County, Alabama.**

WHEREAS, Developer is desirous of placing certain restrictions, conditions and reservations (hereinafter collectively referred to as “restrictions”) upon the above described property in accordance with a general scheme or plan in order (a) to protect the owners of each lot against improper use of surrounding lots as will depreciate the value of the property, (b) to preserve, as far as practicable, the natural beauty of each lot, (c) to insure the creation of attractive, well designed, properly proportioned and appropriate homes of suitable materials with appropriate locations on said lots, (d) to insure proper building setbacks from street and lot lines, (e) to provide adequate free space between structures, and (f) in general, to assure the best and most appropriate development, improvement and maintenance of the subdivision and each lot therein:

NOW, THEREFORE, Developer does hereby impose the following protective restrictions:

1. **RESIDENTIAL USE ONLY:** All lots in the subdivision shall be known and described as residential lots, and no lot may be used for anything other than residential purposes. Manufactured homes shall not be permitted on residential lots. No site-built house may be constructed with less than 2,000 square feet of heated and cooled living area and must be completed within 12 months after commencement of construction. Only 1 residence of a site-built house is allowed per lot and must have at minimum a 2-car attached garage or carport. If carport is used it must only be on rear of home.

2. **ARCHITECTURAL COMMITTEE:** No home, building or other improvement shall be erected, placed or altered on any lot in this subdivision until the said home is approved or building plans, specifications, and plot plan showing the location of such building have been approved in writing by an Architectural Committee composed of Paul S Powers, Melissa Coffey or by a representative designated by the member of said committee. The committee shall be provided all available documentation, including construction contracts, showing the nature and extent of the improvements to be undertaken and the time frame within which the improvements are to be completed. In the event of death or resignation of either member of said committee, the remaining member shall have full authority to appoint a successor member and to approve or disapprove such design and location, or to designate a representative with like authority. In the event said committee, or its designated representative fails to approve or disapprove such design and location with thirty (30) days after said plan and specification have been submitted to it or, in any event, if no suit to enjoin the erection of such building or the making of such alterations has been commenced prior to the completion thereof, such approval will not be required and this covenant will be deemed to have been fully complied with. Such deemed approval shall be only with regard to those matters subject to approval by the Architectural Committee and does not compromise applicable governmental regulations regarding subdivisions in general. If such plans and specification are disapproved, written

notice of such disapproval shall be given to the submitting lot owner in person or by the U.S. Mail. Neither the members of such committee, nor its designated representative, shall be entitled to any compensation for services performed pursuant to this covenant. The developer shall have the right to and it is anticipated that the developer shall permanently designate the Property Owner Association as the representative of the Architectural Committee at such time as the developer determines such designation to be appropriate. All proposed building or construction plans, specification, plot plans, information or related data, drawings, or request for approval, shall be submitted to the Developer at 3558 Oak Tree Drive Ste D, Semmes, AL 36575.

3. BUILDING HOME LOCATION: The minimum building setbacks on all lots will be as shown on the recorded plat, unless otherwise approved as above by the Architectural Committee. Rear lot line setbacks shall be 20 feet. The side yard setbacks on all lots will remain at five (5) feet unless otherwise specified herein or approved as above by the Architectural Committee. For the Purpose of this covenant, eaves and steps shall be considered as part of a building; but they shall not encroach closer than five (5) feet on any side lot line, without prior written approval of the Architectural Committee. All building locations must also comply with the Ordinances and setbacks or sidelines to secure any necessary approval from governmental authority and other property owners and to cause to be recorded such map or plat as may be required to accomplish such change.

4. RE-SUBDIVISION: There shall be no re-subdivision of any lot or combination of lots so as to create any additional lot, and no combination of lots so as to form a lesser number of lots unless approved by the Architectural Committee of the Developer. Lot lines may be relocated at the discretion of the governmental authority having jurisdiction of subdivisions upon application by adjoining owners when such relocation is in the opinion of such authority, in harmony with the existing lots and necessary to make said lots conform to existing conditions.

5. OFFENSIVE ACTIVITIES, ETC.: No trade or business activity of any kind shall be carried on or upon any lot, or in any dwelling nor shall an noxious or offensive activity be done thereon which shall be or become any annoyance or nuisance to the neighborhood. No outside clotheslines shall be permitted in the subdivision. No structure, including fences, shall be erected so as to channel water on an adjacent lot; nor shall any lot owner alter the topography or elevation of a lot and cause a change in the directional flow and/or quantity of drainage water from the original subdivision engineering design approved by the County Engineering Department of Mobile. No inoperable vehicles or car parts are allowed on any lot unless in a fully enclosed garage and vehicles cannot remain parked on the grass or in the yard more than a consecutive length of 72 hours.

6. TRAILERS, ETC.: No trailers, RVs, campers, motor homes or pre-constructed buildings, basement, tent, shack, garage, barn or other outbuilding erected or placed on any lot shall at any time be used as a residence, temporarily or permanently, nor shall any structure of a temporary character be used as a residence. Motor homes, RVs, campers and/or boat trailers which are approved by the Architectural Committee may be kept on the premises only if kept either within a fully enclosed garage or under a carport and behind a 6-foot screening fence not visible from any public street. No boat over thirty (30) feet in length may be kept on the premises and all boats must be kept on trailers on the rear yard not visible from any public street or within a garage or carport not visible from any public street.

7. TYPE AND SIZE OF BUILDING: No building shall be erected, altered, placed or permitted to remain on any lot in the subdivision, other than one single family dwelling, which shall be not more than two and one-half (2 ½) stories in height and shall have a heated and cooled habitable area, exclusive of basements, open porches and garages, of at least 2,000 square feet, with not less than 1,400 square feet on the ground floor if it is more than one story in height. Minimum interior ceiling height shall be a minimum of 9 ft. on first floor of dwelling with a minimum of 10-foot ceiling height in den or family room. A detached garage or other approved outbuilding (not to be occupied as living quarters), may be erected or permitted to remain upon a lot only if the written approval of the Architectural Committee is first obtained, and a building plan, specifications, and a plot plan are all submitted to the Architectural Committee for approval before any construction begins. All dwellings will be completed in accordance with the documents submitted to the Architectural Committee and no portion of the improvements shall be left for future completion beyond the time provided for completion in said documents.

The roof pitch shall not be less than 7/12 on a single-story residence, and shall not be less than 9/12 on residence of one and one-half or more stories. The finished floor elevation on all residences shall not be less than 12 inches above the finished ground elevation. No mill-finish aluminum windows will be

allowed in the construction of any improvement on the lots of the subdivision. Architectural style shingles shall be required for all roofs unless the Architectural Committee approves a metal roof.

All dwellings must contain at minimum an attached double garage or double carport, the roof pitch of which shall be the same as the primary dwelling. No carport may face or open into the frontage street nor shall any sides be able to be seen through, from the frontage street without written approval from architectural committee. An attached garage may open directly facing street, only if approved by architectural committee.

All detached buildings, including storage, utility, and/or pump houses will be located to the rear of the dwelling and shall be screened from view from the front of said dwelling by an approved fence (wood or masonry) which shall be not less than six feet in height. The architectural design, construction and material of such buildings will be subject to Committee or Developer approval. Its size, location, and screening, all are subject to written approval of the Architectural Committee before placing same upon the property. (Any storage or utility buildings must be approved before any construction by the architectural committee).

No air-conditioning or heating unit, blower, tower, condenser, water well or structure or other equipment or apparatus shall be erected, placed, constructed, operated or permitted to remain on any lot unless completely concealed from view from any adjacent lot or street by a hedge or fence enclosure in conformity with the general architecture of the primary residential building and approved by the committee. No above ground pools allowed on lots.

No fuel containers of any type will be allowed above the finished grade and any ancillary lines form the container to any structure of appurtenance will also be buried beneath finished grade.

Vinyl siding may cover no more than 20% of the exterior walls of a single-story structure, and no more than 30% of the exterior walls of a one and one-half story structure, and no more than 40% of the exterior walls of a structure of two or more stories, without Architectural Committee approval.

All dwellings must be completed within twelve (12) months from the issuance date of the building permit from the County of Mobile, unless waived by written approval of the Architectural Committee.

MAILBOXES: No individual boxes will be allowed by Post Office. A centralized mail system will be on a common area easement located on part of Lot 24, Deer Crest Phase II. All lots in Deer Crest will have access to the common area mail system provided by the Developer. All property owners agree to abide by posted POA regulations concerning use of common area mail facility and parking.

8. ANIMALS: Dogs, cats and other small household pets, not exceeding four, may be kept by each lot owner, provided they are not kept, bred or maintained for any commercial purpose or use and are not a nuisance, annoyance or danger to the neighborhood. Parcels 2 acres or more shall be allowed no more than 1 horse per acre and up to 5 chicken hens that must be caged at all times. Each property owner is responsible for animals to be contained within their own property. No other unapproved animal or fowl shall be kept or maintained on any part of said property without written consent from the architectural committee.

9. DRIVEWAYS AND YARDS: Concrete driveways will be required for a minimum of 75 feet for each lot or up to the Architectural Committee approved garage location. Any additional driveway length must have a hard surface driveway. Material, length and width for all driveways must be approved by the Architectural Committee. Immediately after the construction of the initial dwelling on a lot, the front yard minimum fifty (50) feet, side yards minimum fifteen (15) feet or to the lot line, and minimum five (5) feet behind the building shall be fully grassed by the application of solid sod, and not sprigged, seeded or partially sodded. All yards must be maintained in good condition with grass mowed, free from garbage, debris and toys. Yard and landscaping must be maintained by weeding and trimming, and driveways edged. Each lot owner must keep yards free from debris and garbage. All owners of cleared undeveloped lots must keep vegetation below 24" in height. Front of house must be landscaped with shrubs, plants with pine straw or mulch immediately after construction. Landscaping plans must be approved by the Architectural Committee before the construction begins.

10. GARBAGE DISPOSAL CONTAINERS AND EQUIPMENT: No lot shall be used as dumping ground for rubbish and all debris and trash from clearing or construction must be placed in sanitary container or disposed of promptly. Each lot owner must use garbage service and remove garbage

of household garbage allowed. Containers for the temporary storage of disposal must be screened from frontal view.

11. FENCES, WALLS, HEDGES AND ORNAMENTAL STRUCTURES: All fences or hedges must be approved by the Architectural Committee as to their location and material. Concerning corner lots, on which the location of fences, hedges, etc., must be pre-approved by the Architectural Committee; and no fence, wall or ornamental structure, other than one which is an integral part of the dwelling itself, shall be constructed upon any portion of any lot without prior written approval of the Architectural Committee. All fences must be made of wood, brick, stone or other materials acceptable to the Architectural Committee.

12. SIGNS: No sign of any kind shall be displayed to public view on any lot except one professionally lettered sign of not more than four (4) square feet in size, which may advertise the property for sale or rent; except during the construction period, when one additional sign may be erected by the builder and a security service sign shall also be allowed when applicable.

13. EASEMENTS: All easements shown on the recorded plat of the subdivision are hereby adopted as part of these restrictions and all lots in the subdivision shall be subject to such easements. The undersigned developer of the subdivision reserves unto itself and its successors and assigns the right and easement, but not the obligation, to construct, install, maintain, repair and replace, power, gas, sewer, telephone, and other utility lines, equipment and facilities and drainage ditches, in on, over and under the streets, and road easements shown on the recorded plat of the subdivision, and to construct, install, operate, maintain, repair and replace lights, walls, fences, shrubbery, bushes and trees and other decorative or screening improvements in, on, over and under the property included within the areas designated as "DRAINAGE AND UTILITY EASEMENT", if any, with full right of ingress and egress to and from said streets and roads and easements across adjoining property; and the undersigned reserves unto itself and its successors and assigns the right to contract generally with others for the doing of any and all such things and the right to grant unto others such easements, rights and privileges as the undersigned may deem appropriate or convenient in connection therewith.

14. COMPLIANCE WITH ADEM REQUIREMENTS PRIOR TO AND DURING CONSTRUCTION: The lot owner shall be responsible for any compliance with the provisions of the ADEM Storm Water Permit (NPDES) applicable to construction relating to the lot, specifically including the installation of all necessary erosion control items including but not limited to hay bale sediment barriers, silt fencing, temporary construction (stone surfaced) entrances, and all other required Best Management Practices designed to prevent the diversion, overflow, or by-pass of silt, sediment or soil or debris laden storm runoff beyond the limits of said lot. Within thirty (30) days of the initial clearing of any lot, the owner of said lot shall mulch and seed the lot in a manner that will provide a ground cover pending the final sodding required by Paragraph 12. If the lot owner is fined or cited for violation by ADEM due to the non-performance of this covenant, the lot owner shall pay all fines, indemnify and hold harmless the Developer from all cost and expense related thereto. Lot owner will be liable if Builder or Subcontractor tracks mud on roadways or ditches and lot owner will be responsible for removal.

15. CONSTRUCTION REQUIREMENT: All dwellings shall be completed in accordance with the plans and specifications and within the time provided therein. Any exceptions to this requirement will be only by written approval of the Developer.

16. AMENDMENT OR MODIFICATION OF RESTRICTIONS; Any and all of the restrictions or requirements herein set forth may be annulled, amended, or modified at any time by the Developer without the consent of the property owners or by the owners of not less than eighty percent of the lots in said subdivision. Any amending instrument shall be acknowledged by the Developer, Owner or Owners signing same and shall be filed for record in the office of the Judge of Probate of Mobile County, Alabama, provided that no amendments shall place an additional burden, restrictions or requirement on any lot in said subdivision the owner of which does not join in the said amending instruments.

17. PROPERTY OWNERS ASSOCIATION: There has been formed a property owners association which may or may not be incorporated, which is the DEER CREST SUBDIVISION Property Owners Association ("POA") The POA shall have all responsibility for upkeep, and expenses connected therewith, regarding the continuing maintenance and beautification of all roadways, common areas, including but not limited to landscaping, road repair & maintenance, entrances, subdivision's name sign, street signs, centralized mail facilities, lighting, decorative fences, shrubs, etc. The POA shall also be

responsible, to the extent not otherwise provided by state and local governments, to maintain, repair and replace drainage easements, roadways, related structures, and common areas, including detention ponds. Each of the undersigned, developer and future lot owner, are and shall be members of the Association, and bind themselves and their respective heirs, personal representatives, successors and assigns to pay to the association an annual general assessment or charge as herein described. Such assessment, together with interest thereon, and the cost of collection thereof, shall be a charge and lien on each lot and shall be continuing lien of the lot against which each such assessment becomes due. The developer shall be exempt from any payment of POA dues or assessments on Developer owned lots or lots acquired by foreclosure or repossession. Developer may choose to make donations to POA but is in no way obligated to do so.

The first annual general assessment of \$300.00 per lot shall be paid in advance on the day of closing, and then January 1st each succeeding year thereafter. The Property owner's association at their first and subsequent annual meetings shall have the right to collect annual assessments on a pro-rated basis to establish an annual payment date for all lot owners. Each subdivision lot will be assessed the same amount. Owners of contiguous lots that are not used as a residence may pay 50% of POA general annual assessment as long as lot is unoccupied.

The general assessment levied by the Association annually will be used exclusively for the use, maintenance and operation of the areas and things described above, and such other expenses related thereto, including, but not limited to, utility bills and landscaping expenses.

Each lot in the subdivision shall represent one vote. If a lot is owned by more than one person, only one vote may be cast. If one person owns more than one lot in the subdivision, such person shall have a vote for each lot.

The Directors of the Association shall, by a majority vote, recommend the amount of annual assessment and shall submit the same to the lot owners for approval. If the amount recommended does not exceed a total annual assessment of \$350.00, such recommendation will become effective upon the affirmative vote of a majority of the lot owners. If the amount recommended exceeds a total annual assessment of \$350.00, then an affirmative vote of 75% of the lot owners shall be required to establish such an increase. If the recommended annual assessment is not adopted prior to January 1<sup>st</sup> of any year, then the annual assessment shall remain for that year the same as the previous year.

The lien for unpaid assessments shall be effective from and after the time of recording a claim of lien in the Office of the Judge of Probate of Mobile County, Alabama. The claim of lien shall describe the lot, the name of the lot owner, and shall specify the amount of the claim and the period covered thereby. POA shall release lien upon developer foreclosure or developer repossession of a lot. Lien shall become void upon developer foreclosure or developer repossession of a lot and developer shall not be responsible for previous years dues, interest, or late fees.

Upon full payment of all amounts secured by the lien the party making payment shall be entitled to a recordable satisfaction of lien.

Upon and voluntary conveyance of a lot, the Grantor and the Grantee of such lot shall be jointly and severally liable for all unpaid assessments pertaining to such lot, duly made by the Association of accrued up to the date of such conveyance, without prejudice to the right of the Grantee to recover from the Grantor any amounts paid by the Grantee, but the Grantee shall be exclusively liable for those accruing while he is the lot owner.

Any lot owner or any purchaser of a lot prior to completion of a voluntary sale, may require from the Association a certification showing the amount of unpaid assessments pertaining to such lot, and the Association shall provide such certification within (15) days after request therefore. The holder of a mortgage or other lien on any lot may request a similar certificate with respect to such lot. Any person other than the lot owner at the time of issuance of any such certificate, who relies upon such certificate, shall be limited to the amount set forth in such certificate.

If the total assessment is not paid within thirty (30) days after the due date, then there shall be added thereto:

- (i) A late payment charge of \$30.00; and
- (ii) The balance remaining due shall bear interest from the due date at the rate of ten (10%) percent per annum.

The association may bring an action at law against the owner personally obligated to pay the same

or may foreclose the lien created against the property by the terms of this document, in accordance with the statutory provisions of the laws of Alabama then in effect for the foreclosure of a mortgage. A money judgment for unpaid assessments may be taken without waiving the lien securing the same.

18. No lot 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, and the obligation to observe and perform the same; and whether or not it be so expressed in the deeds or other instrument 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 land and every part thereof, as fully as if expressly contained in proper and obligatory covenants or conditions in each and every contract and conveyance of, or concerning any part of the land or the improvements to be made thereon.

**19. Each property owner and future property owner acknowledges that the Mobile area is subject to approximately 60 inches of rain per year and hence this Subdivision and each lot therein is subject to heavy rainfall and surface waters flowing across said lots as a result of such rainfall. Each future owner or owners of any lot in DEER CREST SUBDIVISION acknowledges that the Developer has complied with all subdivision requirements of the County of Mobile. Each property owner understands that the paved access easement as shown on plat has no underground drainage or ditches and each property owner will be responsible for individual lot grading, landscaping, and erosion control and agrees to release, indemnify, and hold harmless the developer and its Realtors from any water drainage from street or adjoining property onto their lot**

Each owner or future lot owner of any lot in DEER CREST SUBDIVISION, by the acceptance of a deed subject to these restrictions, does herewith concur, consent and agree that the Developer's compliance with such subdivision requirements constitutes the exercise of reasonable care.

20. Should any future owner or owners of any lot or lots within DEER CREST SUBDIVISION or any of their heirs, executors, administrators or assigns, violate or attempt to violate any of covenants, terms, conditions, restrictions, and/or limitations herein contained, any person or persons owning any real property situated in said Subdivision may prosecute any proceedings 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 to recover damages for such violations or attempted violations.

21. The Developer herein expressly reserves unto itself the sole and unilateral right to amend, modify, change, cancel or annul such covenants, limitations and restrictions in whole or in part, at any time during the term of same as existing, or as may be amended, modified, changed, cancelled or annulled in accordance with the foregoing reservation. Such action on the part of the Developer is to be evidenced by an instrument executed by a duly authorized agent of Developer and recorded in the office of the Judge of Probate, Mobile County, Alabama.

It is reserved and stipulated herein that such actions may be taken by Developer in accordance with the foregoing authority and power, may result in any, all or part of any covenant, restriction or limitation as existing or as may be amended or changed, being either more or less restrictive or burdensome than the foregoing covenants, restrictions or limitations contained herein.

No action on the part of the Developer pursued in accordance with the foregoing reserved authority shall place an additional restriction or limitation on a specific lot previously conveyed by Developer, unless the then owner of same shall consent thereto by joining in said instrument, or by execution such other instrument as will properly evidence owner's consent, the same being subsequently recorded as set forth hereinabove.

22. TERM: The foregoing restrictions shall run with the land and shall be binding on all lot owners, or upon all parties and persons claiming under or through them, each of whom shall, by virtue of his acceptance of acquisition of title or other interest, accept and agree to be bound by and to abide by all terms and provisions of this instrument, all of which shall be and remain in full force and effect until January 1, 2040. After which time said restriction shall automatically be extended for successive periods of ten years unless amended pursuant to paragraph 17.

23. ENFORCEMENT: If any person or persons shall violate or attempt to violate any of the restrictions contained herein, it shall be lawful for the developer or any party owning any real property situated in said subdivision to prosecute any proceedings at law or in equity against the person or persons

violating or attempting to violate any such restriction and either to prevent him or them from so doing and to recover damages, which shall include a reasonable attorney's fees, for such violation. Neither the Developer nor its employees, agent or assigns or any of its partners or their representative, heirs, personal representatives, successors and assigns (jointly referred to as Developer) shall be liable to any lot owner or lot owners in DEER CREST SUBDIVISION for the manner in which the Developer exercises, or for its failure or refusal to exercise, any right or authority herein granted to Developer whether discretionary or not; for the failure or refusal of any lot owner to comply with any of the provisions hereof; or the failure or refusal of the Developer to enforce any of the provisions hereof against any lot owner.

24. SEVERABILITY: Invalidation of any one of the covenants by judgment or court order shall in no wise effect any of the other provisions which shall be and remain in full force and effect.

25. UTILITY CONNECTIONS: Each lot owner must enter into a contract with utility companies for utility connections and service. All connection fees are the responsibility of the lot owner.

IN WITNESS WHEREOF, DEER CREST SUBDIVISION has caused this instrument to be executed in its name and on its behalf by its officers thereunto duly authorized on the date set out in the acknowledgement below.

By:   
Paul S Powers, As Member

STATE OF ALABAMA  
COUNTY OF MOBILE

I, the undersigned, a Notary Public in and for said County in said State, hereby certify the Paul S Powers, whose name as Member of Powers Investments LLC, 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, as such member and with full authority, executed the same voluntarily, for and as the act of said Powers Investments LLC, on the day of the same bears date.

Given under my hand and notarial seal on this the 30th day of December, 2020.

 (SEAL)  
NOTARY PUBLIC  
My Commission Expires:

