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Deed Book 2003, Page 14798  
Deed Book 2003, Page 12869

STATE OF ALABAMA

COUNTY OF TUSCALOOSA

**RESTRICTIVE COVENANTS AND EASEMENTS**  
**OF**  
**ENGLEWOOD GARDENS SUBDIVISION**

KNOW ALL MEN BY THESE PRESENTS that the undersigned, SPENCER CONSTRUCTION COMPANY, INC., an Alabama corporation, and H.T.J. DEVELOPMENT, L.L.C., an Alabama limited liability company, (herein sometimes collectively called "Declarant"), are the owners of certain real property upon which they intend to develop a residential subdivision known as ENGLEWOOD GARDENS SUBDIVISION (the "Subdivision"), a map or plat of which is recorded in Plat Book \_\_\_\_, at Page \_\_\_\_, in the Probate Office of Tuscaloosa County, Alabama; and

WHEREAS, it is the intention and desire of the Declarant to develop the Subdivision as an exclusive residential subdivision; and

WHEREAS, for and in consideration of the enhancement of the value of said property, the Declarant does hereby restrict the lots in the Subdivision by placing against each and every lot and any common area designated therein the restrictions and easements hereinafter set out and the Declarant covenants and agrees to be bound by all of the covenants, easements and restrictions hereinafter set forth and that all future deeds, covenants, rights of way, easements and other transfers of title shall be made subject to said restrictions, easements and covenants as hereinafter set out, to-wit:

1. **USE.** No lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any building lot other than a single family dwelling. No improvement shall be constructed on any lot in the Subdivision without the prior written consent of the Architectural Control Committee.

2. **SIZE REQUIREMENTS.** The habitable floor area of the main residential structure on any lot, exclusive of basements, porches, patios and garages, shall not be less than one thousand two hundred (1,200) square feet.

3. **BUILDING LOCATION.** No building shall be located nearer to any street than the set back lines shown on the recorded plat. All buildings shall face the minimum building set back

line as shown on the recorded plat of the Subdivision. For the purpose of this covenant, eaves, steps, open porches and terraces at ground level shall not be construed as a part of the building;

provided, however, that this shall not be construed to permit encroachments, except as otherwise specifically provided herein, upon another lot.

4. MINIMUM LOT SIZE. No lot shall be re-subdivided into lots that are smaller in area than the smallest lot in the original subdivision of the lots. For the purpose of this paragraph the word "re-subdivided" shall include any splitting or selling off of any part of a platted lot by metes and bounds. Each lot shall be conveyed as a separately designated and legally described freehold estate, subject to the terms, covenants, conditions, easements, and provisions hereof. Notwithstanding anything provided to the contrary in this Declaration, Declarant may at any time or from time to time divide and redivide, combine and resubdivide any lots owned by Declarant.

5. NUISANCE. No immoral, improper, offensive or unlawful use shall be made of any lot. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood, or unreasonably disturb the occupant of any dwelling in the Subdivision, which prohibited activities shall include, but not be limited to, loud music or noise from radios, televisions, stereos, musical instruments, etc. No drainage patterns or sprinklers shall be altered in a manner that will substantially increase or channelize the flow of water onto any adjacent lot. Each lot owner shall take reasonable measures to cause the over land flow of water to go between and not against adjacent dwellings.

6. TEMPORARY RESIDENCE. No structure of a temporary character, trailer, tent, shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence either temporarily or permanently; provided, however, that Declarant, or its assigns, may maintain a temporary structure as a sales office during the sales period.

7. ANIMALS. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats and other household pets of a peaceful demeanor may be kept on any lot, provided they are not kept, bred or maintained for any commercial purposes, or in numbers so as to be a nuisance to the neighborhood. No such animals shall be objectionable in sight or smell, and the owner shall not permit an animal to cause an unsanitary condition to exist. All animals permitted in the Subdivision shall be kept in the dwelling thereon and/or in the fenced back yard of such lot.

8. RUBBISH. No lot shall allow accumulation of, or be used or maintained as a dumping ground for, rubbish, trash, garbage or other waste accumulated through normal residential use and the same shall not be kept except in sanitary containers. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. No inoperable vehicle shall remain on any lot in the Subdivision for more than twenty-four (24) hours. All garbage and trash shall be placed in containers authorized by the County of Tuscaloosa. The burning of rubbish, trash, garbage, or other waste in the Subdivision is strictly prohibited.

9. DURATION OF RESTRICTIVE COVENANTS. Except where permanent easements are hereby created, these covenants are to run with the land as to all lots and common areas of the Subdivision and shall be binding on all parties and all persons claiming under them for a period of thirty (30) years from this date. These covenants will be automatically extended for successive periods of ten (10) years unless an instrument, in writing, signed by the owners of two-thirds (2/3) of the lots in the Subdivision has been recorded, agreeing to change said covenants in whole or in part.

10. VIOLATION OF RESTRICTIONS. If any person shall violate or attempt to violate any of the covenants herein, it shall be lawful for any other person or entity owning any real property situated in the Subdivision and/or the ENGLEWOOD GARDENS Homeowners Association to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant and either to prevent him, or them, from so doing by injunctive relief or to recover damages for such violation. It is provided, however, that no violation shall ever work a reversion or forfeiture of title.

11. ARCHITECTURAL CONTROL COMMITTEE. No building, fence, or growing hedge row shall be erected, placed or altered on any lot until the construction plans and

specifications therefor, as well as a plan showing the location of the structure, have been approved by the Architectural Control Committee as to quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finished grade elevation. No fence or wall shall be erected, placed or altered on any lot and no change in the exterior color, material, or design of any building, including the roof, or of any mailbox unit, shall be made unless similarly approved. There shall not be any structure erected or built upon any lot, nor shall any structure existing be altered, remodeled, added to, or changed so as to effect the exterior thereof unless similarly approved by the Architectural Control Committee. No healthy tree larger than two inches (2") in diameter measured one foot (1') above the ground or any Dogwood tree of any size that is located ten feet (10') from any dwelling on any lot may be removed without the prior written consent of the Architectural Control Committee.

The Architectural Control Committee shall be composed of LISA ALGIERE, BRUCE JONES, and CURTIS HALL, and any other person or persons selected by them. A majority of the Committee may designate a representative to act for it. In the event of death or resignation of any member of the Committee, the remaining members shall have full authority to designate a successor. Neither the member of the Committee, nor its designated representative, shall be entitled to any compensation for services performed pursuant to this covenant. At any time after the Declarant has divested itself of the ownership of all of said lots, the then record owners of a majority of the lots shall have the power through a duly recorded written instrument to change the membership of the Committee or to withdraw from the Committee or restore to it any of its powers and duties.

The Committee's approval or disapproval as required in these covenants shall be in writing. In the event that the Committee, or its designated representative, fails to approve or disapprove within thirty (30) days after plans and specifications have been submitted to it, or, in any event, when no suit to enjoin the construction has been commenced prior to the completion of a building or dwelling thereon, approval will not be required and the related covenants and restrictions shall be deemed to have been fully complied with.

The Committee may, in its sole discretion, develop design guidelines for the subdivision as it sees fit. The Committee shall have the authority to grant variances from its design guidelines and these Restrictive Covenants during the development of the Subdivision to prevent undue hardship; provided, however, that where applicable, the aggrieved lot owner shall also seek a variance from the local board of adjustment. No member of the Committee shall be liable to any lot owner in the Subdivision or the Englewood Gardens Homeowners Association (or any officer or director of same) as a result of such Committee member's exercise of his authority and discretion as a Committee member.

12. SIGNS. No sign of any kind shall be displayed to the public view on any lot or any common area, except a name or address sign of not more than one (1) square foot and a "for sale" sign of three (3) square feet or less; provided, however, that the Declarant may install such advertising signs within the Subdivision as the Declarant may determine in its sole discretion which may only be located in a dwelling window. No business activities of any kind whatsoever shall be conducted in any building or on any portion of any building on any lot; provided, however, that the foregoing shall not apply to the business activities, signs, and billboards, or the construction and maintenance of the buildings, if any, by Declarant, its agents and assigns, during the course of construction and the initial sales period.

13. MINING AND DRILLING. No oil or gas drilling, oil or gas development operations, oil or gas refining, quarrying or mining operations of any kind shall be permitted upon or in any lot, nor shall oil wells, gas wells, tunnels, tanks, mineral excavations or shafts be permitted upon or in any lot. No derrick or other structure designated for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.

14. UTILITY AND DRAINAGE EASEMENTS. Easements for installation and maintenance of utilities and drainage facilities are reserved and created as shown on the plat. There is hereby reserved, created and granted a blanket easement upon, across, over and under all of the areas upon which buildings and structures are not erected for members of the Architectural Control Committee, parties in privy with the members of said Committee, and invitees, servants or employees of said Committee, for the purpose of cutting grass, trimming shrubbery, pruning,

edging, fertilizing, watering or otherwise caring for the lawn or other platted area and for the purpose of removing garbage, trash, rubbish or any of the things prohibited by paragraph 8 hereof. There is hereby reserved, created and granted a blanket easement upon, across, over and under all of the areas upon which buildings and structures are not erected for general surface and underground drainage, and all utility companies for providing necessary utilities to any dwelling situated on any lot, for ingress, egress, installation, replacing, repairing and maintaining the same, including but not limited to water, garbage, sewers, gas, telephone, electricity and television transmission systems, and by virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary poles, wires and other necessary equipment and appliances on said property and to affix and maintain electrical and/or telephone wire, circuits, and conduits on, above, across and under the roofs and exterior walls of dwellings erected thereon. An easement is granted to all police, fire protection, ambulance and similar persons to enter upon all non-closed areas in the performance of their duties. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines or other utilities may be installed or relocated on said property except as initially provided and approved by the Declarant, or after all of the dwellings have been erected and sold by the Declarant, then by the permission of the individual lot owners affected by such installation or relocation and with the approval of the Architectural Control Committee. In the event any utility company furnishing a service covered by the general easement herein provided shall request a specific easement by separate recordable document, Declarant shall have the right to grant such easement and it is further stipulated that the easements provided herein shall in no way affect any other recorded easement on said premises.

15. **SIDEYARD EASEMENTS.** The dwelling on each lot may be built by the Declarant on or within twelve (12) inches of a side boundary line, which boundary line shall be known as the "zero setback line". A Sideyard Easement shall serve each dwelling. The Sideyard Easement shall be on the adjoining lot and immediately adjoining the lot along the zero setback line. The Sideyard Easement shall be a minimum of three (3) feet and a maximum of five (5) feet in width (measured from the zero setback line to no farther than the wall of the dwelling located on the adjoining lot) and shall extend the length of the zero setback line from the front of the lot to the rear wall of the dwelling; provided, however, that the Sideyard Easement in the front of a lot shall not extend into the parking pad or driveway of the adjacent lot as originally located by the Declarant. In the event that the dwelling is located more than twelve (12) inches from the side boundary line, the Sideyard Easement shall be limited in width to that necessary to provide an area five (5) feet in width from such dwelling. For example, if the dwelling is located three (3) feet from the side boundary line, the Sideyard Easement shall only extend two (2) feet onto the adjoining lot. Further, there will be a minimum of five (5) feet of separation between dwellings at their footings. Notwithstanding any provision contained herein to the contrary, no easement created hereby shall be deemed to create an encroachment and to the extent the same appears such easement shall be deemed modified to the extent necessary to eliminate such perceived encroachment.

The Sideyard Easement serving a dwelling shall be known as the Dominant Estate. The lot across which the Sideyard Easement lies shall be known as the Servient Estate.

The Sideyard Easement shall be used for maintenance and repair purposes by the owner of the Dominant Estate, and neither the whole or any part thereof, nor any right to use and enjoy the whole or any part thereof, shall be sold, mortgaged, leased, rented or otherwise granted and conveyed separate and apart from the Dominant Estate.

The owner of the Dominant Estate shall not:

- (a) permit eaves, siding, lighting fixtures, gutters or overhangs of the dwelling to extend more than twenty-four (24) inches into the Sideyard Easement;
- (b) permit dryer vents or air conditioning condensate lines of the dwelling to extend more than twenty-four (24) inches into the Sideyard Easement;
- (c) suffer or permit any waste upon the Sideyard Easement;

(d) undertake any use of or affix any object to any wall, fence or other structure on the Servient Estate which abuts, adjoins or crosses the Sideyard Easement;

(e) undertake any grading that would tend to prevent proper drainage of the Sideyard Easement, or to promote soil erosion or to undermine support for the foundation of any wall, fence or other structure on the Servient Estate which abuts or adjoins the Sideyard Easement;

(f) place or permit the accumulation of any soil or fill material against any wall, fence or other structure on the Servient Estate which abuts adjoins or crosses the Sideyard Easement to a height which exceeds original grade;

(g) cause, suffer or permit any damage to any utility lines located within the Sideyard Easement or interrupt or interfere with the maintenance and repair thereof;

(h) construct, erect or install any structure upon, across, over, under or within the Sideyard Easement or undertake any grading or fill or any other activity upon the Sideyard Easement which is in violation of, or which would result in a violation of, any applicable governmental statute, ordinance, rule or regulation.

There shall be reserved to the owner of the Dominant Estate with the respect to the Sideyard Easement the right to:

(a) cause or permit the dryer vent and air conditioning condensate line serving the dwelling constructed upon the Dominant Estate to extend over the Sideyard Easement; cause or permit the foundations of the dwelling constructed upon the Dominant Estate to extend under the Sideyard Easement (below finished grade) and to cause or permit the eaves, siding, lighting fixtures, and gutters, if any, of the dwelling constructed on the Dominant Estate to extend over the Sideyard Easement at heights no less than as such eaves, siding, lighting fixtures, and gutters are originally constructed; and extensions of no greater than twenty-four (24) inches; provided that no such gutters shall be permitted which cause or lead to excess water run-off and drainage upon the Sideyard Easement that results in erosion of the surface thereof;

(b) enter upon the Sideyard Easement at reasonable times and under reasonable circumstances for the purpose of constructing, reconstructing, maintaining and repairing any connecting fence, wall or other structure on the Dominant Estate which abuts, adjoins or crosses the Sideyard Easement;

(c) permit reasonable drainage of water and other emissions from the Dominant Estate over, upon and across the Sideyard Easement;

(d) in exercising the right of entry upon the Sideyard Easement as provided for above, the owner of the Dominant Estate agrees to utilize reasonable care not to damage any landscaping or other items existing in the easement area; provided, however, that the owner of the Dominant Estate shall not be responsible for damage to such landscaping or other items to the extent such damage could not be reasonably avoided in connection with such entry upon the easement area for authorized purposes and shall not be liable for damage to structures if they are built upon the easement so as to unreasonably interfere with repairs, maintenance or reconstruction of the wall, fence or the dwelling on the lot having the Dominant Estate.

The owner of the Servient Estate may use the Sideyard Easement for the purposes of planting, landscaping, installation and use of general landscape type structures, including such structures as benches, walks, patios, decks, fences or trellises, general recreation, access, drainage, and other visual, aesthetic and recreational purposes, and it shall be maintained by the owner of the Servient Estate. The owner of the Servient Estate further shall maintain the landscaping on any land lying between the Dominant Estate's building foundation and their mutual property line.

The owner of the Servient Estate shall not:

(a) place any structures on the Sideyard Easement in such a manner or such a location that the structure would unreasonably interfere with repair, maintenance or reconstruction of any wall, fence or the dwelling on the lot having the Dominant Estate. If the structure does interfere, the owner of the Dominant Estate will not be liable for any damage to a structure which is done in the course of repair, maintenance or reconstruction work done by the Dominant Estate.

(b) permit trees, shrubbery or other vegetation to grow on the Sideyard Easement which would cause damage to or interfere with the maintenance and repair of any wall, fence or the dwelling on the Dominant Estate;

(c) cause or permit any offensive contact (including without limitation thereto, any pounding or bouncing of objects) with any wall of the residence on the Dominant Estate which abuts, adjoins or crosses the Sideyard Easement;

(d) suffer or permit upon the Sideyard Easement any activities by household pets or other animals which would tend to cause damage to, or undermine support for, any wall, fence or other structure on the Dominant Estate which abuts, adjoins or crosses the Sideyard Easement;

(e) cause or permit to exist any open, uncontained fire, or the storage of any combustible material, on the Sideyard Easement;

(f) construct, erect or install any structure upon, across, over, under or within the Sideyard Easement or undertake any grading or fill or any other activity upon the Sideyard Easement which is in violation of, or which would result in a violation of, any applicable governmental statute, ordinance, rule or regulation.

Except for a window which may be located by the Declarant at least six (6) feet above the finished floor level of the residence on the Dominant Estate, the owner of the Dominant Estate shall not construct, install or otherwise cause to be made any door or window in the residence on the Dominant Estate which abuts or adjoins the Sideyard Easement.

In the event of any dispute arising concerning the rights and obligations created by this Section, the owner of the Servient Estate and the owner of the Dominant Estate shall each choose one (1) arbitrator, who shall choose a third arbitrator, and the decision of a majority of all the arbitrators shall be binding upon such owners.

16. SIGHT LINES. No fence, wall, hedge or shrub planting with sight lines at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street boundary lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines or in the event of a rounded property corner, from the intersection of the street boundary lines extended.

The same line limitations shall apply on any lot within ten (10) feet from the intersection of a street boundary line with the edge of a drive-way or alley pavement. No tree shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

This covenant shall not apply to the original construction of a fence, wall, hedge or shrub planting by the Declarant nor shall it apply to any subsequent owner merely maintaining such original fence, wall, tree, hedge or shrub planting, it being the intention of the Declarant to prohibit interference with sight lines as described herein and not taken into consideration in the original development contemplated.

17. CONFLICT WITH ZONING ORDINANCE. Any part of these covenants that is in conflict with the any applicable zoning ordinance of the local governing body, as to minimum requirements shall be invalid to the degree that they are in conflict with such ordinance; however,

the parts of these covenants which restrict buildings or other requirements further or more strictly, shall control in lieu of the zoning ordinance. The invalidation of any part of these covenants by the said zoning ordinance shall not invalidate any other requirements contained herein.

18. EXTERIOR FINISH. No building which replaces a building that is part of the original development shall be completed on any lot with an exterior finish of asbestos, roll composition or any type of false or imitation exterior finish. The decision of the Architectural Control Committee shall be final in event of a dispute as to what constitutes "false or imitation exterior finish."

19. PAINTING. Each lot owner shall, from time to time, paint and otherwise maintain the exterior of his dwelling unit (including fencing) as needed. Such maintenance and painting shall be done in a manner harmonious with the remaining dwelling units and shall not be completed in such a matter, color or design as to disrupt the harmonious blending of the original architectural plan of the dwelling units. The decision of the Architectural Control Committee shall be final in the event of a dispute as to whether the exterior of a dwelling unit "needs" painting and/or maintenance.

20. ANTENNAE. There shall be no exterior radio, television, electronic antennae, or any signal receiving device of any kind, erected or placed upon any building or lot (except a satellite dish antenna no greater than twenty-four inches (24") in diameter which may be located in the rear yard but out of view from the street and adjacent lots and at a height not to exceed the height of either side yard fence), nor shall any property owner allow the operation of any radio, television, or other electronic device which interferes in any manner with the reception or transmission of electronic signals of any kind by any other lot or the owner or occupant thereof.

21. STORAGE. There shall be no storing or keeping of firewood, lawn care equipment (including water hoses), bicycles, off-road motorcycles, trash containers or any similar equipment or substances in the front or outside the fence on the side of any dwelling or lot. Also, all garage doors shall remain closed at all times, except when the garages are in use for entry or exit of vehicles, cleaning, repairing, or the like.

22. AUTOMOBILES. To the greatest extent reasonably possible, all automobiles, motor homes, boats, and campers are to be kept and parked in the garage. Extra vehicles of residents and vehicles of visitors may be parked in driveways. At least two (2) off-street parking spaces shall be provided on each lot. No lot owner shall make any modification to the garage or the driveway of a lot which would eliminate a parking space. Parking on streets shall be prohibited except for special events and social functions. All four-wheelers, golf carts, motorcycles, lawn mowers, and other small equipment and vehicles shall be stored either in the garage or in the back yard in such a manner as to not be visible from the street.

23. MISCELLANEOUS STRUCTURES. There shall not be any installation or placing of any camper, trailer, tent, shack, storage unit, workshop, basketball goal, playground equipment (including, but not limited to, swings, swing sets, monkey bars, trampolines, or gymnastics equipment), windmills, bird baths, bird houses, frog ponds, flag poles, playhouses, similar structures, or any other decorative structures or items upon any lot without the prior written approval of the Architectural Control Committee.

24. LAWN CARE. Each lot owner shall be responsible for the lawn and shrubbery on his lot. The lawn and shrubbery shall be kept in a reasonably well manicured condition so as not to distract from the overall appearance of the lot and subdivision. If the Architectural Control Committee should determine that an owner is in violation of this provision, the Architectural Control Committee shall give notice to the owner of the lot to remedy the condition and shall otherwise proceed as set forth in paragraph 31 herein below.

25. FENCES. All fences installed upon a lot by the Declarant shall be owned by the owner of the said lot. The owner shall be responsible for insuring, keeping, and maintaining in good repair that portion of said fence located upon the owner's lot; provided, however, that the exterior of any fence located at the front entrance of the Subdivision shall be maintained in good repair by the Association. Any fence deemed by the Architectural Control Committee to need repair shall be promptly repaired by the owner and if the owner fails to so repair his fence, the

Association shall proceed as set forth in paragraph 31 herein below to repair such fence. Fences or walls erected at the rear yards shall not be higher than six (6) feet, unless erected by the Declarant or unless approved by the Architectural Control Committee. No fences or walls shall be permitted in the front yards except such fences or walls used for privacy, security, decorating or ornamental purposes as installed by the Declarant. Any fence connecting homes which were originally erected by the Declarant for side yard or rear yard privacy shall not be removed, destroyed or materially altered, and shall be maintained in good condition and repair by the owner. Fences must be constructed to permit reasonable access to utilities, or they must have gates to allow access. Fencing added after initial construction of a dwelling must conform to the same style as that of the nearest adjacent fences at the time of construction and must be approved by the Architectural Control Committee. The rear of each lot in the Subdivision shall be enclosed by a privacy fence that is approved in advance by the Architectural Control Committee; provided, however, that the privacy fence for Lot 15 shall only be required to extend 100 feet behind the dwelling thereon. In the event a privacy fence is damaged or destroyed, the owner of that lot shall construct a comparable replacement fence within thirty (30) days.

26. NEIGHBORHOOD ASSOCIATION. The Declarant has caused the ENGLEWOOD GARDENS HOMEOWNERS ASSOCIATION, INC. (hereinafter the "Association") to be formed. The Articles of Incorporation of the Association are filed in the Probate Office of Tuscaloosa County, Alabama in Incorporation Book \_\_\_\_, at Page \_\_\_\_\_. At the time of the execution of this instrument, the By-Laws are on file in the office of the Association.

The title to each lot in ENGLEWOOD GARDENS carries with it the right to cast one (1) vote, on the basis of one (1) vote per one (1) lot, at any regularly or specially called meeting of the members of the Association. Membership in the Association shall be appurtenant to and may not be separated from ownership of lots in the Subdivision.

It is anticipated that ENGLEWOOD GARDENS may contain certain open spaces and common areas, that the streets may have medians containing signage, street lights, a water sprinkling system, shrubs, trees, bushes and other landscaping, that walls or fences may be constructed at the entrance of the Subdivision and along the boundary of the Subdivision, and that certain drainage detention structures may be built on open spaces and/or commons areas of the Association (hereinafter collectively called the "Common Area Improvements").

The care and upkeep of the Common Area Improvements as well as the payment of all insurance premiums, utility bills, and other expenses associated with the same shall be the responsibility of the Association and shall be governed by the Articles of Incorporation and By-Laws of the Association.

27. WAIVERS. The Declarant reserves for itself (so long as it is the owner of said real property or the real property located next to it), and its successors and assigns, the right to waive violation of these restrictions by written instrument upon its determination that the violation waived is minor, does not adversely affect the value, utility or enjoyment of any other lot in the Subdivision, and does not constitute a material hazard to anyone, including the construction of attached dwellings in future phases of the ENGLEWOOD GARDENS development.

28. SOIL CONDITIONS. Declarant makes no warranty concerning soil conditions and each every lot owner shall be responsible for investigating same and all foundation requirements prior to construction.

29. SOD. The front and side yards (to the rear corner of the dwelling) shall be fully sodded before any dwelling is occupied.

30. EXTERIOR APPEARANCE. No lot owner shall permit his lot or dwelling thereon to fall into disrepair or become unsightly or unsanitary or to otherwise violate the provisions of these Restrictive Covenants that are applicable to same. The Association shall have the authority, after having given reasonable and detailed notice not less than sixty (60) calendar days to any lot owner in violation of this provision to correct such violations, to take reasonable action to repair or remedy such violation(s) the reasonable costs of which may be added to such violating lot owner's dues and assessments.



31. UNDERGROUND UTILITIES. All utilities in the Subdivision shall be installed underground in compliance with the requirements of the applicable utility company.

32. CONSTRUCTION DEBRIS. All construction debris shall be stored in dumpsters, dump trucks, or such other containers as approved by the Architectural Control Committee. No person shall burn debris, trash, rubbish, or garbage in the Subdivision.

33. INCORPORATION BY REFERENCE ON RESALE. In the event any owner sells or otherwise transfers his lot, any deed purporting to affect such transfer shall contain a provision incorporating by reference the covenants, restrictions, easements, charges and liens set forth in this Declaration.

34. SEVERABILITY. Invalidity of any one of these covenants or restrictions by judgment, decree or order shall in no way affect any other provision hereof, each of which shall remain in full force and effect.

35. CAPTIONS AND GENDER. The captions of this instrument are intended for convenience only and shall not alter, enlarge, modify or otherwise affect the provisions hereof. Wherever the context requires, all references to the singular shall include the plural and all references to the masculine gender shall include the feminine and, in both instances, vice versa.

IN WITNESS WHEREOF, the said \_\_\_\_\_, has on the \_\_\_\_ day of \_\_\_\_\_, 2003, caused these presents to be executed by SPENCER CONSTRUCTION, INC., an Alabama corporation, and H.T.J. DEVELOPMENT, L.L.C., an Alabama limited liability company.

SPENCER CONSTRUCTION, INC., an  
Alabama corporation

By: \_\_\_\_\_  
THOMAS L. SPENCER, President

H.T.J. DEVELOPMENT, L.L.C., an Alabama  
limited liability company

By: \_\_\_\_\_  
\_\_\_\_\_, Managing Member

STATE OF ALABAMA       §  
                                      §  
COUNTY OF TUSCALOOSA   §

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that THOMAS L. SPENCER, as President of SPENCER CONSTRUCTION COMPANY, INC., an Alabama corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day, that being informed of the contents of said instrument, he, as such President and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal, this the \_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires: \_\_\_\_\_

STATE OF ALABAMA           §  
   §  
COUNTY OF TUSCALOOSA   §

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that \_\_\_\_\_, as Managing Member of **H.T.J. DEVELOPMENT, L.L.C.**, an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day, that being informed of the contents of said instrument, he/she, as such Managing Member and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal, this the \_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires: \_\_\_\_\_