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Tim Mitchell Judge of Probate

**AMENDMENT TO THE  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF  
CHEROKEE RIDGE SUBDIVISION**

**THIS AMENDMENT** to the Declaration of Covenants, Conditions and Restrictions of Cherokee Ridge Subdivision is made as of the 27<sup>th</sup> day of August, 2012, with the consent of Cherokee Ridge Corporation, by the Cherokee Ridge Country Club, Inc. and by the owners of real estate located in the Cherokee Ridge Subdivision in Union Grove, Marshall County, Alabama.

**WITNESSETH:**

**WHEREAS**, the undersigned are Cherokee Ridge Corporation, Cherokee Ridge Country Club, Inc. and the owners (the "Owners") of one or more real estate lots (the "Lots") located in Union Grove, Alabama in that certain subdivision known as "Cherokee Ridge"; and

**WHEREAS**, said lots are subject to the "Declaration of Covenants, Conditions and Restrictions of Cherokee Ridge Subdivision" (the "Declaration"), dated April 20, 1992, and filed for record in the Probate Office of Marshall County, Alabama; and

**WHEREAS**, Section 3 of Article VII of the Declaration sets forth a method and procedure for the amendment of said Declaration which permits such amendment upon the approval of a number of Owners having ownership of not less than seventy-five per cent (75%) of the Lots; and

**WHEREAS**, there are 337 Lots located in Cherokee Ridge and seventy-five per cent (75%) of such Lots requires the approval of the Owners of not less than 253 lots; and

**WHEREAS**, the undersigned Owners believe it to be in the best interest of the Owners to cause the Declaration to be amended in certain respects; and

**WHEREAS**, the undersigned Cherokee Ridge Country Club, Inc. believes it to be in the best interest of Cherokee Ridge Country Club, Inc. and its members to cause the Declaration to be amended in certain respects.

**NOW THEREFORE**, in consideration of the premises the undersigned do hereby modify, alter and amend the Declaration, as follows:

1. Section 9 and Section 19 of Article I are hereby amended to read as follows:

Section 9. **"Common Area"** shall mean all real property to be owned by the Association for the common use and enjoyment of the Owners, as set forth in the Subdivision Map and any additions, amendments, or supplements to the Subdivision Map. Neither the swimming pool, the tennis court nor the golf course or any other Club Property shall be a part of the Common Area nor will the Association or any owner have any ownership interest in said properties except as may be hereafter agreed in writing by the Board.

Section 19. **"Lease"** shall mean that certain lease of the Club Property wherein Cherokee Ridge Golf, Inc. is the lessor and the Club is the lessee dated August 26, 1992.

2. Section 9.1 is hereby added to Article I and shall read as follows:

9.1 **"Common Expense"** shall mean:

- (a) Expense of administration, maintenance, repair or replacement of the Common Area and portions of Lots maintained by the Association pursuant to the Bylaws of the Association;
- (b) Expense declared common expense by provisions of this Declaration or the Bylaws of the Association;

(c) Expense agreed upon as common expense by the Association assessed against the Owners in accordance with the Declaration or the Bylaws;

(d) Expense identified in Subsection B, Section 2, Article V; and

(e) Any valid charge against the Association as a whole.

3. Subsection Y of Section 1 of Article IV is hereby amended to read as follows:

**Y. Club Membership.** While it is deemed desirable that all owners be members of the Club, there is no requirement that ownership of any Lot is contingent upon Club Membership. Further, ownership of any Lot does not entitle any Owner to membership in the Club or to use of any Club facilities which include rights to the use of the swimming pool, the tennis courts and the golf course as specified in the Lease. Membership in the Club is controlled exclusively by the Charter and Bylaws of the Cherokee Ridge Country Club, Inc. Notwithstanding the foregoing or any other provision of this Declaration or the Bylaws of the Association, the Association, acting through its Board, shall have authority to enter agreements providing that a Club membership may be granted to an Owner by reason of the Owner's participation in the Association and payment of Annual Charges as described in Article V.

4. Section 1, Article V is hereby retitled to read as follows:

**Section 1. CONSTRUCTION AND MAINTENANCE OBLIGATIONS.**

5. Subsection C, Section 1, Article V is hereby amended to read as follows:

**C. Maintenance for the tennis courts, the swimming pool and pool house, the club house, and the golf course shall be performed according to the requirements of the Lease during its term. Following the expiration of the term of the Lease on August 26, 2012 maintenance for these items**

may be assumed, in whole or in part, by the Association by the act of the Board and is hereby declared to be "Common Expense".

6. Subsections B and G of Section 2, Article V are hereby amended to read as follows:

B. Purpose of Charges. The annual charges (sometimes referred to in this Declaration or Bylaws as "Annual Charge(s)" or "assessments") shall be used for payment of Common Expense as that term is defined in this Declaration, as follows:

(1) The annual charges levied by the Association and having a Limitation Amount of \$695 per year shall be used exclusively for the improvement and maintenance of the Common Area, specifically including the roads, and for the provision, maintenance, restoration and/or repair of certain services or utilities or the procuring of certain services or utilities to the owners, which may include but will not be limited to security, garbage collection, a sanitary sewer system, a cable television system, fire protection and for additional similar services which may be approved by the Association or otherwise under this Declaration or any amendment thereto. Notwithstanding the above restriction on use of funds, the said funds may, to the extent of the excess of accumulated surplus over the total amount of regular charges for the preceding year, be used for capital expenditures to benefit the Common Area and fulfill the purposes of the Association; and

(2) Notwithstanding any other provision contained in this Declaration or in the Bylaws, following termination of the Lease on August 26, 2012, such annual charges may be used, and the Board shall have the power and be authorized to provide, and contract for, the operation, improvement and maintenance of the Golf Course Property which expense is hereby declared to be Common Expense. Any such contract shall be made on the terms and conditions as determined by the Board in its discretion and not inconsistent with this Declaration as amended.

The Board shall further have the power to establish a separate Annual Charge to be used exclusively for such purpose. Such charge shall have a Limitation Amount of \$1,200 (in addition to the Annual Charge hereinabove provided for) separate and distinct from the Limitation Amount for the Annual Charge. For purposes of this subsection (2), the authority of the Board shall be subject to the following limitations:

(a) The Board shall not make any commitment of funds that cannot be terminated at the end of a term not to exceed three (3) years;

(b) Not less than one-hundred twenty (120) days in advance of the end of any contract term for which funds are committed, the Board shall notify the Owners of (i) the pending opportunity to terminate such commitment and (ii) whether or not the Board has elected to continue such commitment for an additional term not to exceed three (3) years; and

(c) In the event that the Board has determined to continue such commitment, the Owners of Lots may submit a petition, not less than sixty-five (65) days in advance of the end of any contract term, that has been executed by such Owners following the notification from the Board, and requesting termination of the Association participation in such contract. Provided that such petition contains the signatures of the Owners of not less than fifty-one per cent (51%) of all Lots which are not owned by Declarant or any affiliate of Declarant and not owned by any Owner who is in arrears in regard to annual charges or assessments herein provided for, the Board shall certify whether or not: (i) the Owners of the requisite number of lots have signed said petition; (ii) such signatures were signed within the required time period; and (iii) the petition was presented in a timely manner. Should these requirements be met, the Board will

forthwith cause Association participation in such contract to be terminated and cause such certified petition to be filed for record in the Probate Office of Marshall County, Alabama. Following the certification and filing of such petition, the Board shall not have the power or authority to assess the annual charge for the Golf Course Property except as may thereafter be granted pursuant to the amendment provisions set forth in subsection A, Section 3, Article VII of this Declaration.

G. Limitation on Annual Charge. During the period from the date hereof through September 1, 2013, the Annual Charge in any calendar year shall not exceed the Limitation Amount. The term "Limitation Amount" shall mean: (1) \$695 per year for each Lot owned by such Owner to be set aside for the payment of all items of Common Expense except for the operation, improvement and maintenance of the Golf Course Property; and (2) for years beginning on September 1, 2012, the term "Limitation Amount" shall also include the additional sum of \$1,200 per year to be used exclusively for the operation, improvement and maintenance of the Golf Course Property. For years beginning on September 1, 2013 and thereafter, the Annual Charge shall not exceed the Adjusted Limitation Amount. For purposes of this provision, the term "Adjusted Limitation Amount" shall mean the Limitation Amount described in each of subsection (1) and (2), above, adjusted as of September 1, 2013, and every subsequent September 1<sup>st</sup> as follows:

(1) The Limitation Amount shall be divided by the index number for May 2012, as shown by the Consumer Price Index for all Urban Consumers (CPI-U)—U.S. City Average for All Items (with a standard reference based period of 1982-84 = 100) published by the Bureau of Labor Statistics of the U.S. Department of Labor, and then multiplying that amount by the index number for the month of May preceding January 1 of the year for which the Adjusted Limitation Amount is being determined. (The May 2012 index was 229.815)

(2) In the event that the base period for the index (i.e., 1982-84 = 100) shall be changed and a proper computation is no longer possible or should the index be discontinued, comparable statistics on the purchasing power of the U.S. Dollar shall be substituted for the foregoing formula.

7. A new Article VIII is hereby added as follows:

#### **ARTICLE VIII**

##### **INVALIDITY, CONFLICT AND WAIVER**

Section 1. Invalidation. The invalidity or unenforceability of any provision of the Declaration or any amendment thereto shall not in any way affect the remaining provisions which shall continue in full force and effect.

Section 2. Conflict. In the event of any conflict between the Declaration and this amendment, the provisions of this amendment shall control. In the event of any conflict between the provisions of the Declaration, this amendment and the provisions of the Bylaws, this Declaration and this amendment shall control.

Section 3. Waiver. No restriction, condition, obligation or covenant contained in this Declaration shall be deemed to have been abrogated or waived by reason of failure to enforce the same, irrespective of violations or breach thereof which may occur.

**[SIGNATURE PAGES FOLLOW]**

The undersigned are owners of lots located within that certain real estate development known as Cherokee Ridge. Substantial effort has been made to correctly identify the owners of each lot, the legal names of those owners and to place the correct lot number with the signature of the owner of such lot. The lots in Cherokee Ridge may be identified in the pertinent plats, deeds and other instruments filed for record in the Probate Office of Marshall County, Alabama. They may be identified as being in Cherokee Ridge Subdivision, Cherokee Ridge Phase 1, Cherokee Ridge Subdivision Phase 1, Cherokee Ridge Phase I, Cherokee Ridge Subdivision Phase I, Cherokee Ridge Phase 2, Cherokee Ridge Subdivision Phase 2, Cherokee Ridge Phase II, Cherokee Ridge Subdivision Phase II, Cherokee Ridge Subdivision Phase II First Addition, Cherokee Ridge Phase III, Cherokee Ridge Phase IV, Cherokee Ridge Phase IV First Addition, Cherokee Ridge Phase II First Addition Redivision, Redivision of Cherokee Ridge, Cherokee Ridge Golf Patios, The Gardens at Cherokee Ridge, The Cottages at Cherokee Ridge, Creekwood Court, a Condominium, by metes and bounds description or the like (together "Cherokee Ridge"). It is the intention of the undersigned to execute this document to indicate consent and agreement for any parcel, Lot or Lots owned, in Cherokee Ridge, by the undersigned, whether correctly described or indicated below or not, to the adoption of the foregoing amendments to the Declaration of Covenants, Conditions and Restrictions of Cherokee Ridge as set forth hereinabove.