

STATE OF ALABAMA)

COUNTY OF MOBILE)

AMENDED DECLARATION OF RESTRICTIONS AND COVENANTS

FOR

AVONLEA SUBDIVISION

KNOW ALL MEN BY THESE PRESENT, that this Amended Declaration of Restrictions and Covenants is made, adopted, published and declared this the 10TH day of June, 2004, and amends the original Declaration of Restrictions and Covenants recorded in Book 5525, Page 1559 by AVONLEA, LLC, hereinafter sometimes referred to as "Owner";

WITNESSETH:

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

Avonlea Subdivision as per plat thereof recorded in Map Book 103, Page 43, of the records 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. No lot may be improved, used or occupied for any purpose other than as a private residence, and there shall be only one such residence per lot. No flat, duplex, apartment houses, group apartments, or condominium, though intended for residence purposes, may be erected, or placed thereon.

2. **ARCHITECTURAL COMMITTEE:** No building or other improvement shall be erected, placed or altered on any lot in this subdivision until the building plans, specifications, and

plot plan showing the location of such building have been approved in writing as to conformity and harmony of external design with existing structures in the subdivision, as to location of the building with respect to topography and finished ground elevation and as to compliance with all other requirements of these restrictions, by an Architectural Committee composed of MARK DAVIS and TINA DAVIS, or by a representative designated by the members 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. 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 specifications are disapproved, written notice of such disapproval shall be given to the submitting lot owner in person or by 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, specifications, plot plans or related data, drawings, or requests for approval, shall be submitted to the Developer at 207 Tanner Williams Ct., Mobile, Alabama 36608.

3. BUILDING 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. The side yard and rear lot line setbacks on all lots will remain at ten (10) feet unless otherwise specified herein or approved as above by the Architectural Committee. For corner lots, lots having a side yard drainage easement, and lots with less than 100 feet of width at the building set back line, one side yard set back line may be reduced to eight (8) feet, with Architectural Committee approval. For the purpose of this covenant, eaves and steps shall be considered as part of a building; but they shall not encroach closer than seven (7) feet on any side lot line, without prior written approval of the Architectural Committee. All building locations must also comply with the Zoning Ordinances and setbacks and other regulations of the agencies of the City and County of Mobile having jurisdiction and authority. It shall be the responsibility of any owner seeking modification of any 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 any noxious or offensive activity be done thereon which shall be or become any annoyance or nuisance to the neighborhood. No outside clothesline shall be permitted in the subdivision. No structure, including fences, shall be

erected so as to channel water on an adjacent lot; or 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 City Engineering Department of Mobile.

6. TRAILERS, ETC.: No trailers, mobile homes nor 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, 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 twenty-six (26) feet in length may be kept on the premises and all boats must be kept on trailers in 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 2,400 square feet per dwelling, with not less than 1,400 square feet on the ground floor if it is more than one story in height. There shall be a minimum of nine (9) foot ceiling height for all heated and cooled areas of dwelling. 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 residences of one and one-half or more stories. The finished floor elevation on all residences shall not be less than 8 inches above the finished ground elevation.

All dwellings must contain an attached double garage or carport, the roof pitch of which shall be the same as the primary dwelling. No garage or carport may face or open onto the frontage street nor shall the sides of such enclosure open to, or be able to be seen through, from the frontage street.

All detached buildings, including storage and utility sheds 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. The roof will be shingled like the residence and its size, location, and screening, all are subject to written approval of the Architectural Committee before placing same upon the property. (No metal storage or utility buildings and no metal roofs will be approved).

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 fuel containers of any type will be allowed above the finished grade and any ancillary lines from the container to any structure or appurtenance will also be buried beneath finished grade.

No mill-finish aluminum windows will be allowed in the construction of any improvement on the lots of the subdivision.

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 six (6) months from the issuance date of the building permit from the City of Mobile, unless waived by written approval of the Architectural Committee.

8. MAILBOXES: Every lot owner shall use a standardized mailbox to be constructed at the lot owner's expense. Developer to provide lot owner with design and material information for said mailbox which shall be exclusively used by lot owner. (Approximately \$200)

9. SIDEWALK: Lot owners shall construct sidewalks along all street frontage of their respective lots at their own expense with the same standards as would be applicable to sidewalks located within the City of Mobile and, in all events, the location, dimensions and other features of such sidewalks shall be subject to the prior written approval of the Architectural Committee. All sidewalks are to be completed during home construction or within one year after lot purchase, whichever occurs first, unless otherwise approved in writing by the developer or the Architectural Committee.

10. 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. No other unapproved animal or fowl shall be kept or maintained on any part of said property. All city ordinances must be obeyed.

11. 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 containers or disposed of promptly. All incinerators or other containers for the temporary storage or disposal of such material must be approved by the Developer, and must be screened from frontal view.

12. MINING OPERATIONS: No oil drilling, oil development operations, oil refining, quarrying or mining operation of any kind shall be permitted upon the surface of any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or within 500 feet

beneath the surface of 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.

13. FENCES, WALLS, HEDGES AND ORNAMENTAL STRUCTURES: No fences or hedges shall be located nearer the front property line of any lot than ten (10) feet to the rear of the front of the dwelling without the written approval of the Architectural Committee except as to 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 the prior written approval of the Architectural Committee. All fences must be made of wood, brick, stone or other materials acceptable to the Architectural Committee.

14. SOD FRONT AND SIDE YARDS: Immediately after the construction of the initial dwelling on a lot, the front yard and side yards and ten (10) feet behind the building shall be fully grassed by the application of solid sod, and not sprigged or partially sodded.

15. SIGNS: No sign of any kind shall be displayed to public view on any lot except one professionally letter 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.

16. 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.

17. COMPLIANCE WITH ADEM REQUIREMENTS PRIOR TO AND DURING CONSTRUCTION: The lot owner shall be responsible for compliance with the provisions of the ADEM Storm Water Permit (NPDES) issued for the subdivision 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 Developer is fined or cited for violation by ADEM due to the non-performance of this covenant, the lot owner shall indemnify and hold harmless the Developer from all cost and expense related thereto.

18. CONSTRUCTION REQUIREMENT: All lot purchasers agree to begin construction of a dwelling on their individual lot or lots within a period of twelve months from the original purchase date of said lot or lots. 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.

19. 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 Owner/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 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, restriction or requirement on any lot in said subdivision the owner of which does not join in the said amending instrument.

20. PROPERTY OWNERS ASSOCIATION: There has been formed a property owners association which is a non-profit corporation which is the AVONLEA Property Owners Association (“POA”). The POA shall have all responsibility for upkeep, and expenses connected therewith, regarding the continuing maintenance and beautification of all common areas, including but not limited to street islands, entrance (median), subdivision’s name sign, street signs, 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 and related structures, including detention ponds. This responsibility includes, but is not limited to, inspections, removal of trash, silt or debris from detention pond and mowing bi-annually or as needed. Such expense could be from \$100.00 to \$1,000.00 a year. 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 a continuing lien on the lot against which each such assessment is made, and shall be the personal obligation of the owner of such lot at the time that such assessment becomes due.

The first annual general assessment of \$100.00 per lot shall be paid in advance on the day of closing, and the same day of each succeeding year thereafter. The property owners 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.

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 the 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 \$125.00, such recommendation will become effective upon the affirmative vote of a majority of the lot owners. If the amount recommend exceeds a total annual assessment of \$125.00, 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 September 1st 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.

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

Upon any 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 or 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 certificate 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 entitled to rely thereon, and his liability for such unpaid assessments 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 \$20.00; 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.

21. 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 instruments of conveyance of the property, the same shall be absolutely subject to

the covenants, terms, conditions, restrictions and limitations herein contained, which shall run with and be appurtenant to the 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.

22. 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 AVONLEA SUBDIVISION acknowledges that the Developer has complied with all subdivision requirements of the County of Mobile, including but not limited to street, drainage and utility requirements as evidenced by the execution of the plat of this Subdivision by the County of Mobile.

Each owner or future lot owner of any lot in AVONLEA 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.

23. Should any future owner or owners of any lot or lots within AVONLEA SUBDIVISION or any of their heirs, executors, administrators or assigns, violate or attempt to violate any of the 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.

24. 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 or partner of Developer and recorded in the office of the Judge of Probate, Mobile County, Alabama.

It is expressly 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 executing such other instrument as will properly evidence owner's consent, the same being subsequently recorded as set forth hereinabove.

25. 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 or 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, 2024. After which time said restrictions shall automatically be extended for successive periods of ten years unless amended pursuant to paragraph 17.

26. 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 AVONLEA 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.

27. 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.

IN WITNESS WHEREOF, AVONLEA 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: _____(SEAL)
MARK DAVIS, Member

STATE OF ALABAMA)
COUNTY OF MOBILE)

I, the undersigned, a Notary Public in and for said County in Said State, hereby certify the MARK DAVIS, whose name as member of AVONLEA, 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 AVONLEA, LLC, on the day of the same bears date.

Given under my hand and notarial seal on this the _____ day of _____, _____.

NOTARY PUBLIC
My Commission Expires:_____