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Madison County,AL FRANK BARGER Probate Judge

File 2019-00083282

# Clift Farm

Residential Declaration Madison County, Alabama



# CLIFT FARM

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Instrument #: 2019-00083282 Seg: ₹

# **Table of Contents**

Part	Page
1.	Overview of the Community1
	Vision for the Residential Neighborhood; The Neighborhood Association; The Business Association;
2.	Community Life
	2.1: The Neighborhood Association
	2.2: Neighbors
3.	Physical Surroundings
	3.1: The Neighborhood Commons
	3.2: Private Domains
4.	Architectural Standards
	4.1: Clift Farm Design Standards
	4.2: Review Process
5.	Finance
	5.1: The Neighborhood Association Budget29
	Accounting; Budget; Reserves and Deferred Maintenance; Unanticipated or Extraordinary Expenses; Capital Improvements; Zone Expenses; Contracts for Maintenance
	5.2: Assessments on Residential Parcels
{H0496	5621.1}
	Clift Farm Residential Declaration ii

Instrument #: 2019-00083282 Seq: 2

File Number: 201900083282

Page 2 of 64

6.	The Future	37
	Additional Neighborhood Association Powers; Amendment; Duration	
7.	Definitions	39
8.	Miscellaneous Provisions and Signatures	43
App	endix I: The Early Years	48
	Board; The Neighborhood Commons; Finance; Assignment of Developer Rights; Addition	onal

{H0496621.1}

Clift Farm Residential Declaration

iii

Clift Home Place, LLC, an Alabama limited liability company (the "Founder"), with the joinder of Breland Homes, LLC, a Delaware limited liability company, makes this Declaration, as of the May of November, 2019.

#### STATEMENT OF PURPOSE

Clift Farm is a mixed-use community in Madison, Alabama, and is being developed using the general principles of a "traditional neighborhood." The Founder owns the property which shall become Clift Farm. The Founder records this Clift Farm Residential Declaration (the "Residential Declaration") and establishes the Clift Farm Neighborhood Association (the "Neighborhood Association") to enhance community life, to institute and enforce certain covenants and restrictions, to provide for further maintenance of Clift Farm and its Neighborhood Commons, including identified streets, alleys, parks, walks and utility facilities, and to allow for self-governing of Clift Farm by its Owners.

A separate declaration for the Business District within Clift Farm (the "Business Declaration") has been or will be recorded to create a business owners association (the "Business Association") and to regulate and maintain the commercial portions of Clift Farm. The plan for Clift Farm and the relationship between the various recorded instruments are described in the Clift Farm Community Operating Agreement.

This Residential Declaration is intended to provide for the needs of residential property wherever located within Clift Farm.

#### DECLARATION

The Founder hereby establishes "Clift Farm" as all of that property making up Clift Farm, described on Exhibit A and submits to this Residential Declaration that portion of the

Project described in <u>Exhibit B</u> (the "Residential Neighborhood").

The Founder hereby declares that this Residential Declaration, including Appendix I of this Residential Declaration, shall run with the land and be binding upon all parties having any right, title or interest in the Residential Neighborhood, and which shall inure to the benefit of every Owner in the Residential Neighborhood or any portion of it and to the benefit of the Founder.

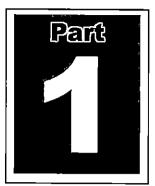
Except to the extent expressly provided in this Residential Declaration and any Supplemental Declaration, all of the rights, powers, and duties of the Neighborhood Association and the Owners, who are members of the Neighborhood Association, including the Owner's voting rights, shall be governed by the Articles and Bylaws of the Clift Farm Neighborhood Association. The Neighborhood Association shall also have all of the rights, powers, and duties provided in the Alabama Homeowners' Association Act, AL Code § 35-20-1 et seq.

{H0496621.1}

Clift Farm Residential Declaration

Instrument #: 2019-00083282 Seq: 4

File Number: 201900083282 Page 4 of 64



# Overview of the **Community**

This Residential Declaration looks significantly different from most property owners' association documents. It is based on the premise that communities have personalities just like people, and that the personality is usually established at the beginning of the community's life. Typical documents, which tell everyone what they have to do and what they cannot do, teach property owners to enforce rules. This document takes a different approach by teaching people the principles behind running their community.

This Residential Declaration begins with an overview of the community and ends with a look at the future. In between are four chapters concerning Community Life, Physical Surroundings, Design Standards and Finance. Each of these four middle chapters has two parts. The first part considers the issue from a community-wide viewpoint, while the second part brings the issue to the level of the resident.

Although the meanings of most words should be apparent from the context, definitions are provided in Part 7.

Appendix I concerns development issues and is an integral part of the Residential Declaration during the community's early {H0496621.1}

years. The Appendix is no longer necessary after the Founder no longer controls the development.

Most chapters contain two types of information: Descriptive text and "Quick View" information.

The text that begins each chapter provides the philosophical framework that the Owners need to make decisions. Not every issue and concern can be anticipated, and the text does not try to cover every possible situation. Instead, the text helps the community through the decision-making process.

Quick View outlines some of the basic issues discussed in the chapter in the format of a table or grid. Although it sometimes summarizes information presented in the text, Quick View may also present new information. Quick View helps to define roles and to draw distinctions between related ideas.

The Residential Neighborhood relies on the covenants - agreements between neighbors - set out in this Residential Declaration. By taking title to property within the Residential Neighborhood, Owners agree to these covenants, which are legally binding and enforceable against both the Owner and the property.

We hope that an association that follows the guidance outlined in this Residential Declaration will avoid many of the disputes conflicts and that can divide neighborhood. However, in the event of legal action, the descriptive text and Quick View portions of this Residential Declaration, including information set out in table form, are to be interpreted as legally binding. As Quick View often abbreviates information from the descriptive text, any

apparent conflict should be resolved in favor of the descriptive text.

# **Quick View: Community Participants**

	NEIGHBORHOOD ASSOCIATION	BUSINESS ASSOCIATION	FOUNDER
PURPOSE	Maintain and support the Neighborhood Commons, support the covenants, provide resources for residents and help prevent or resolve conflicts between neighbors.	Maintain and support the Business Commons, support the covenants, provide resources for Business Owners and help prevent or resolve conflicts between commercial neighbors or commercial and residential neighbors.	The developer of the community who created the initial vision for the residential and Business neighborhoods and manages the construction of that vision mainly through the Community Operating Agreement.
LEGAL STATUS	Nonprofit corporation	Nonprofit corporation	For-profit company
ENTITY	Clift Farm Neighborhood Association, Inc.	Clift Farm Business Association, Inc.	Clift Home Place, LLC
MEMBERS  All individuals or entities owning Residential Parcels within the Residential Neighborhood.		All individuals or entities owning Commercial Parcels within the Business District.	Managed by the Breland Management Company, which is managed by Mr. Louis Breland as the community begins.
PRIMARY SOURCE OF FUNDS	Assessments on Residential Parcels within the Residential Neighborhood secured by property lien.	Assessments on Commercial Parcels within the Business District secured by property lien	Successful development, sale or management of the community.

{H0496621.1}

Clift Farm Residential Declaration



# Community Life: The Neighborhood Association

All Owners of Residential Parcels in the Residential Neighborhood are automatically members of the Neighborhood Association during the period of their ownership. Membership in the Neighborhood Association is a legal right and obligation attached to the property. New Residential Parcel Owners become members in the Neighborhood Association upon transfer of title to the land. Except as expressly provided, when Owners vote on matters addressed in this Residential Declaration, their vote is weighted in the same way as relative values are assigned to Residential Parcel types (discussed in Part 5.2). Owner votes on matters set forth in the Bylaws or Articles may be on a different basis, as provided in those documents.

This Part contains some of the most important provisions concerning Neighborhood Association operation and voting procedures. Additional provisions are contained in the Bylaws and Articles.

## Neighborhood Association Operation

The operation of the Neighborhood Association relies on the following individuals:

{H0496621.1}

- The Board of Directors ("Board"). Most decisions about the Neighborhood Association are the responsibility of the Board, acting on the Residential Parcel Owners' behalf. The Board shall consist of at least three people. Unless specifically provided otherwise, the Board has the authority to act on behalf of the Neighborhood Association and to make all decisions necessary for the operation of the Neighborhood Association, the care of the Neighborhood Commons and enforcement of covenants contained in this Residential Declaration. The Founder appoints the directors until all of the Parcels in Clift Farm have been sold to Owners other than the Founder or its designated entities, until the Founder voluntarily relinquishes its right to appoint some or all of the directors.
- President. The President, who is elected by the Board, is the chief executive of the Neighborhood Association empowered to make decisions within the scope of authority described by the Board and this Residential Declaration. President executes the details of projects authorized by the Board and handles matters that arise between Board meetings, within the scope of authority established in the Bylaws or by the Board. The President must be a member of the Board, Candidates for President must be sitting on the Board with time remaining equal to the term of the President's office.
- <u>Chancellors</u>. The Chancellors are not officers of the Board. However, Chancellors play an important role in the life of Clift Farm. The Chancellors may mediate disputes among Owners, their tenants or Occupants, related to the requirements of the Clift Farm Design Standards, or any rules giving the Board, Owners, their tenants and

Clift Farm Residential Declaration

Occupants a forum to work out differences and find solutions. Depending on the circumstances, the Chancellors may act individually, or more than one Chancellor may act as a panel. If disputes cannot be resolved by mediation, the Chancellors may make recommendations to the Board. The Board determines the number Chancellors (there may be one or more Chancellors in Clift Farm) and may decide to make the Chancellor a paid professional position, in which case, the Board will select a mediator, attorney or other professional for each available Chancellor position. Chancellors are elected by the Board. If there are insufficient numbers of candidates for Chancellor, the Board may select the remaining Chancellors.

The Board will also elect a Vice President, a Secretary, a Treasurer and other such officers as described in the Bylaws. These officers have the following responsibilities:

- Vice President. A Vice President takes the place of the President and performs the duties of the President whenever the President is absent or unable to act. If neither the President nor a Vice President is able to act, the Board shall appoint some other member of the Board to act in the place of the President on an interim basis. A Vice President also performs such other duties as required by the Board or by the President and, except as specified, has all of the general powers and duties of a Vice President of a corporation organized under the Alabama Nonprofit Corporation Law. Section 10A-3-1.01 et seq. If there is more than one Vice President, the Board determines which Vice President acts.
- <u>Secretary</u>. The Secretary (i) keeps the minutes of all meetings of the Neighborhood Association and of the Board; (ii) has charge of such Residential Declarations and papers

as the Board directs; (iii) maintains a register listing the place to which all notices to Owners and Mortgagees are to be delivered; (iv) upon request delivers statements of all unpaid assessments applicable to a particular Residential Parcel to be conveyed; (v) executes notices of delinquent assessment(s); (vi) executes notices of and releases of liens for delinquent assessments, and (vii) performs the duties of a Secretary described in the Bylaws and the Alabama Nonprofit Corporation Law, Section 10A-3-1.01 et seq.

Treasurer. The Treasurer is responsible for managing (i) the Neighborhood Association's funds and securities; (ii) keeping full and accurate financial records and Residential Declarations of account showing all receipts and payments; (iii) preparing all required financial data: (iv) depositing money and valuables in the appropriate bank or other institution as designated by the Board; and (v) in general, performing all the duties of a treasurer of a corporation organized under the Alabama Nonprofit Corporation Law, Section 10A-3-1.01 et seq.

The President and Directors are not paid for their services; however, they are reimbursed for actual expenses. If one or more Chancellors are hired by the Board, the Chancellors would be paid for service to the Neighborhood Association on terms negotiated by the Board. Chancellors may be hired on a part-time or asneeded basis.

#### Election Procedure

The Board regulates election procedure and sets policy concerning voter registration and the casting of ballots. The Bylaws contain additional provisions concerning the election procedure.

{H0496621.1}

Clift Farm Residential Declaration

**Elections, Casting Votes.** Once the Residential Parcel Owners have the right to elect Class A Directors, then the Residential Parcel Owners directly elect the relevant directors to the Board.

The Board, A Residential Parcel Owner may cast its votes for as many candidates as there are Directors to be elected. A Residential Parcel Owner is not required to use all its votes; however, no cumulative voting shall be permitted. For example, if there are three seats to be filled and the Owner has one vote, the Owner may cast one vote each for one, two or three candidates, but shall not cast more than one vote for any particular candidate. If the Owner is eligible to cast two votes, the Owner may cast two votes a piece for each of up to three candidates. The candidates receiving the highest number of votes shall be declared elected. Directors may be elected by a plurality; a majority is not required.

## **Board Meetings**

The Board usually meets on a monthly basis but may meet more or less often depending on the community's needs. Notice of Board meetings is to be posted or Residential Parcel Owners otherwise notified of the meeting schedule. The Board may go into executive session to discuss certain issues including possible or pending litigation and personnel matters.

**Voting.** Voting at a Board meeting requires presence of at least a majority of the Directors, in person or by telephone conference or, if allowed by law, by proxy. While face to face meetings are beneficial and should be conducted when practicable, it may be difficult at times to get a quorum of Directors together in a timely manner. If permitted by law, any action required to be taken by vote of the Board may

be taken in the absence of a meeting (or in the absence of a quorum at a meeting) by obtaining the written approval of a majority of the Board or by unanimous consent. With the approval of all Directors, and if permitted by law, meetings may be conducted by telephone. Rules about quorums and voting procedures are provided in the Bylaws and may be affected by applicable statutes.

### Neighborhood Meeting and Voting

Although the elected Board makes most decisions, election of the Board (once that right has begun) and certain other decisions require the participation of all Residential Parcel Owners. Notice of each annual or regularly scheduled meeting of the Neighborhood Association must be sent or delivered personally or by e-mail at least ten days and not more than fifty days before each meeting. The notice must state the time and place of the meeting.

Notice of any other Neighborhood Meetings must be sent at least at least ten days and not more than sixty days before such a meeting. This notice must state the time, place and purpose of the meeting. Notice of any meeting at which Residential Parcel Owners are to vote on amendments to the Articles, a plan of merger or a proposed sale of assets pursuant to Section 10A-3-5.03 of the Alabama Nonprofit Corporation Law or the dissolution of the Neighborhood Association must be given as required by Section 10A-3-2.03 of the Alabama Nonprofit Corporation Law.

Rules about notice of meetings for amending articles of incorporation and other actions, quorums and voting procedures are provided in the Bylaws and may also be affected by applicable statutes.

For those decisions requiring Residential Parcel Owners' approval, a Neighborhood Meeting

{H0496621.1}

Clift Farm Residential Declaration

provides a public opportunity for discussion and voting. As a convenient reference and not as a limitation, actions which may under the terms the Residential Declaration require a vote of the Residential Parcel Owners, or assent in writing, include the following:

Action	Part
Election of the Board (after right	2.1
is received)	
Repeal of Rules and Regulations	2.2
adopted by the Board	
Conveyance or dedication of the	3.1
Neighborhood Commons	14 July Shire Shires Han
Approval of General	5.1
Assessments when increased	
more than 15%	
Ratification of expenditures for	5.1
capital improvements	1
Approval of Zone expenses	5.1
Amendment or termination of	6
Residential Declaration	

#### Records

The Board must keep a record of all Board meetings and other Neighborhood Association meetings. For each action taken, the record should state the vote and a description of the action approved and, where applicable, the reasons why the action was considered necessary and a summary of the information on which the decision was based. Any Residential Parcel Owner has the right to review the Neighborhood Association's records. reasonable times, and can make copies or pay to have copies made for a reasonable fee. To the extent permitted by law, certain records may not be made available to Residential Parcel Owners if genuine privacy considerations exist.

The Neighborhood Association should use available technology for effective, timely communication to Owners.

### Use of Professional Management

The Board may hire a professional manager, either an individual or a management company, for the Neighborhood Association. Some typical duties of the manager are as follows:

- Determining day-to-day maintenance needs and dispatching personnel or service providers as necessary (although major contracts would go through the Board and possibly a bidding process as well),
- Supervising vendors, employees and service providers and making payment to them,
- Collecting Assessments (including past-due notices as necessary),
- Keeping the books and records of the Neighborhood Association and preparing budgets and financial statements (and working with an accountant as necessary),
- Mailing or posting notices of meetings, election information and other communications to Residential Parcel Owners, and
- Answering inquiries from Residential Parcel Owners (and referring some questions to the Board or its attorney as necessary).

In contrast, Board members are not paid (except to be reimbursed for expenses). The Board selects the manager and must work with the manager and provide guidelines. Board members make such policy decisions as adopting the budget and determining assessment levels, making significant employment decisions and approving major contracts. They decide what major repair or

{H0496621.1}

Clift Farm Residential Declaration

replacement projects will be undertaken and the general level of service to be provided.

#### **Business Commons**

In addition to the Neighborhood Commons owned and maintained by the Neighborhood Association, the Residential Parcel Owners may have access to, and contribute to, the maintenance of the common areas owned and maintained by the Business Association (the "Business Commons"). The Neighborhood Association, by its Board, has the authority to enter into agreements with the Business Association for the use of recreational facilities and other Business Commons, to arrange for utilization and payments provided under the Community Operating Agreement, and to pay a fee for such use that will be paid from General Assessments or other Assessments.

{H0496621.1}

Clift Farm Residential Declaration



# Community Life: The Neighbors

This Residential Declaration does not have long lists of rules. Instead, the concept is simple: neighbors shouldn't create unreasonable disturbances or unsafe conditions and neighbors should tolerate a certain amount of activity, noise, pets and exuberant children as part of a vibrant community.

#### Use of the Residential Parcels

Residential and Business Uses. Clift Farm is intended as a mixed-use community where, in addition to single and multi-family residences, offices, retail and civic uses thrive. Business uses are subject to the Business Declaration and the Community Operating Agreement. These commercial and civic uses are an integral part of a pedestrian-friendly community and allow people to obtain some goods and services and interact without having to use an automobile. Businesses must use reasonable measures to dispose of garbage properly and to minimize the impact of noise and odor on the surrounding area. However, residents near businesses need to recognize that a certain amount of noise and odor may be unavoidable.

Home-based Businesses. No business or business activity shall be conducted on, in or upon any Residential Parcel at any time, except with the written approval of the Board. The Board may permit a Residential Parcel to be used for business purposes so long as such business, in the sole discretion of the Board, does not otherwise violate the Provisions of the Residential Declaration or Bylaws and does not create a disturbance. The Board may issue rules regarding permitted business activities.

**Garage Sales.** No Garage sales, estate or yard sales, sample sales and similar kinds of sales activity from Residential Parcels is permitted unless approved by the Board.

**Leasing.** Residential Parcels or separate residential units within a Residential Parcel. such as an outbuilding apartment, may be rented, so long as the tenants and Occupants comply with the covenants for neighborhood life contained in this chapter. The minimum lease term shall be 12 months and the Owner shall provide a copy of the lease to the Neighborhood Association. No short-term or overnight rentals are permitted. Tenants and associated **Occupants** mav use Neighborhood Association's recreational facilities through a limited number of recallable recreational memberships; provided the Owner authorizes the Tenant to use the recreational facilities. An Owner's house and any outbuilding on a Residential Parcel shall not be rented to two different parties. For example, the outbuilding cannot be rented to a different party than the renter of the main building, but the Owner may live in the main house and rent the outbuilding, or vice versa. The Neighborhood Association may prohibit the leasing of any Residential Parcel or residential unit within a Residential Parcel while the Owner is in default in the payment of Assessments and may attach rentals if the Residential Parcel or residential unit within the Residential Parcel is leased while the default exists.

{H0496621.1}

Clift Farm Residential Declaration

### Safety and Appearance

Generally. Each Owner must keep its Residential Parcel in good order and repair and free from debris as determined by the Board. The Neighborhood Association shall regulate placement and maintenance of garbage and trash containers and fuel or gas storage tanks (including the prohibition of such tanks) and other matters affecting the attractiveness or safety of Residential Parcels.

Signage. No sign, advertisement or notice of any type including, but not limited to, directional signs, open-house signs, flags or balloons (other than those erected by the Founder or the Neighborhood Association or those specifically approved under the Clift Farm Design Standards or by the Clift Farm Design Committee (the "Design Committee")) shall be erected or displayed on any Residential Parcel. "For Sale" or "For Rent" signs erected by licensed realtors are allowed but are limited to a uniform size, style, design and placement as specifically permitted by the Clift Farm Design Standards. No Political campaign signs are permitted.

Vehicles: The Clift Farm Design Standards or the Neighborhood Association shall regulate or prohibit the parking of trailers, recreational vehicles, nonfunctioning, oversized or excessive number of vehicles or equipment, and shall require that garage doors be kept closed except when entering or leaving the garage. Motor boats may not be stored in any yard in Clift Farm. Commercial vehicles, military vehicles, helicopters, or any vehicles in excess of ½ ton may not be stored or parked in any yard, driveway or on the street.

**Sports Equipment:** Play structures, such as swing sets, must be approved by the Design Committee in advance and must be kept in good repair and their location shall be limited, in accordance with the Clift Farm Design Standards. Large play structures such as

skateboard ramps are prohibited. No basketball hoops of any kind shall be allowed.

Temporary Structures: The Clift Farm Design Standards shall prohibit or regulate construction trailers, tents, shacks, barns, sheds or other structures of a temporary character that are visible from outside the Residential Parcel. However, reasonable occasional use of tents for festive occasions or children's backyard camping is part of life and should be enjoyed.

#### Pets

Pets are welcome so long as the pets do not cause an unsafe condition, unreasonable disturbance or annoyance or public nuisance. The Neighborhood Association shall regulate the number, type and size of pets (including particular breeds of dogs deemed to create unreasonable danger) and shall prohibit the keeping of animals other than customary household pets, which it shall define. The Neighborhood Association shall designate specific areas within the Neighborhood Commons where pets may be walked, will prohibit pets on other areas, will require pet owners to collect and dispose of animal waste and will require pets to be on a leash.

## Rules and Regulations

The writing of rules is one way to address specific issues that arise within the community. The Founder, at any time, or the Neighborhood Association after the period of Founder Control, may adopt or amend Rules and Regulations interpreting or expanding upon the basic principles of this Part and other portions of this Residential Declaration, including but not limited to, rules about vehicles, sports equipment, temporary structures and satellite dishes. Rules adopted by the Neighborhood Association addressing a particular subject in a more restrictive manner shall preempt the

{H0496621.1}

Clift Farm Residential Declaration

Rules adopted by the Founder addressing the same subject. A copy of the current Rules and Regulations will be made available upon request.

Effective Date. Rules and Regulations of the Neighborhood Association take effect immediately upon approval by the Board, or at a later date selected by the Board. Rules and Regulations of the Founder are effective upon their adoption by the Founder and may not be repealed or amended by the Residential Parcel Owners during the Period of Founder Control After the period of Founder Control, any Rule or Regulation passed by the Neighborhood Association or the Founder may be repealed by majority vote of the Residential Parcel Owners. present in person or by proxy, at a special meeting called by the President, a Board Member, or ten percent (10%) of all the Residential Parcel Owners by written petition.

The Rules and Regulations, as adopted by the Neighborhood Association from time to time, are incorporated by reference into this Residential Declaration. In the event of a conflict between any provisions in the Rules and Regulations and this Residential Declaration, the provisions of this Residential Declaration control. The Rules and Regulations of each of the Neighborhood Association and the Business Association shall apply only within the areas of their ownership, their members' ownership or public areas immediately adjacent to these areas.

#### Role of the Chancellor

When problems with covenant enforcement arise, the Board or any Owner, Owner's tenant or Occupant may file a request with the Board for a Chancellor to hear the issue. The Board may authorize, in advance, categories or types of issues that may be heard by the Chancellor without first coming to the Board. The Board has the authority to approve or deny the use of {H0496621.1}

a Chancellor to attempt to mediate agreement. If requested by the Board or the Chancellor to which the case is assigned, and if there is more than one Chancellor, the case will be heard by more than one Chancellor, sitting as a panel. The Chancellor or panel will notify the resident who is believed to be in violation, as well as the Owner of the Residential Parcel, if different, and set a convenient date for a mediation session.

Mediation Session. The Chancellor operates primarily as a mediator. The object of the mediation session is to hear the various viewpoints and to attempt to reach an agreement that is acceptable to all parties. Sessions must be conducted with tact, dignity and respect. The Chancellor or panel has the discretion to decide if the complaining party should participate in the mediation session.

**Agreement.** The Chancellor or panel is to evaluate whether the resident has caused an unreasonable disturbance or other violation. and, if so, to help reach a resolution within the general principles set out in this Part. If the parties reach agreement, the agreement is to be summarized in writing and signed by the parties. The Chancellor's office is to keep a copy of the agreement. The Chancellor or panel has the right to consider whether the same problem has arisen in the past and whether the Owner or resident complied has with previous agreements in evaluating the agreement. If agreement is not reached, or if the parties do not comply with the agreement, the Chancellor or panel may make a report and recommendation to the Board for further action. The decision of the Board is final, subject to any subsequent court action.

#### Enforcement

Each Owner and the Residential Parcel Owners' Occupants, Guests and tenants are required to abide by the covenants contained in this Residential Declaration, which are covenants

Clift Farm Residential Declaration

running with the land, and any Rules and Regulations established by the Founder or adopted by the Neighborhood Association. Each Owner is responsible for assuring such compliance, and any violation by Occupants, Guests or tenants may be considered to be a violation by the Owner. If the Chancellor cannot resolve a violation, the Board is empowered, on behalf of the Neighborhood Association, to take necessary legal steps to enforce the covenants contained in this Residential Declaration.

If the Chancellor determines that the problem is not satisfactorily resolved, the Board may take any of the following actions:

- Fines. The Board has the right to assess fines up to the maximum allowed by law and may restrict the resident's use of Neighborhood Commons for up to ninety (90) days or until the violation is remedied, whichever is longer. However, the primary goal of this Part is not to punish but to resolve problems. The Neighborhood Association may suggest or approve agreements and suspend payment of a fine if the agreement is honored. Fines shall be charged against the Residential Parcel as an Individual Residential Parcel Assessment. Any fines collected shall be contributed to the general fund of the Neighborhood Association.
- Pets. All pets shall be confined in a manner acceptable to the Board in its sole discretion. No dog runs or outdoor pets shall be allowed. If the Board finds that a pet causes an unsafe condition, unreasonable disturbance or annoyance or public nuisance, it may require the Owner, Owner's tenant or Occupant to take steps to cure or limit the offensive condition. If such steps are ineffective, if the resident or Owner fails to cooperate or if the pet is considered to create an unsafe condition or unreasonable disturbance or annoyance, the

- Neighborhood Association may require that an Owner, tenant or Occupant permanently remove the pet from Clift Farm.
- Corrective Action for Enforcement Rights, If the Board determines that any Owner is in violation of this Residential Declaration, the Clift Farm Design Standards, or applicable Rules and Regulations, or has failed to maintain any part of a Residential Parcel (including the yard and any wall, fence, or building for which the Owner is responsible) in a clean, attractive and safe manner, in accordance with the provisions of this Residential Declaration, the Clift Farm Design Standards or applicable Rules and Regulations, the Board shall notify the Owner of its findings and may assess fines. If the violation continues for ten (10) days after notice to the Owner, the Neighborhood Association shall have the right without liability to enter the Residential Parcel to correct, repair, restore, paint and maintain any part of such Residential Parcel, including but not limited to landscaping, and to have any objectionable items removed from the Residential Parcel. The Board may reduce or eliminate the time for notice if it believes the condition creates a hazard. All costs related to such action are to be assessed to the Owner as an Individual Residential Parcel Assessment. The Board may also assess a management fee for activities that it must take to correct, repair, restore, paint or maintain any part of such Residential Parcel on behalf of an Owner. If, in accordance with this section, authorized agents of the Association enter upon any Residential Parcel to abate or remove a violation or breach of this Residential Declaration, the Clift Farm Standards, or the Rules and Regulations, neither the Person entering the Residential Parcel nor the Person directing the entry shall be deemed liable for any manner of trespass for such action. This paragraph

shall not apply to Residential Parcels so long as they are owned by the Founder.

- Tenant Violations. If, after notice to both the Owner and tenant the Board determines that a tenant has violated this Residential Declaration or Rules and Regulations, the Neighborhood Association may assess fines against the Owner and otherwise enforce this Residential Declaration or Rules and Regulations.
- Additional Remedies. All remedies listed in this section are non-exclusive and may be applied cumulatively. The Neighborhood Association shall also have the right to file a lien or bring suit to enforce the covenants contained in this Residential Declaration. including the right to an injunction and to recover damages for any violation.
- Failure to Enforce Not a Waiver of Rights. No delay or failure on the part of an aggrieved Person to invoke any available remedy in respect to a violation of any provision of this Residential Declaration shall be held to be a waiver by the Person of (or an estoppel of that Person to assert) any right available to such Person upon recurrence or continuance of such violation or the occurrence of a different violation. nor shall there be imposed upon the Founder, the Association, the Association's board or any Design Committee a duty to take any action to enforce this Residential Declaration.

## Initiation of Litigation by the Neighborhood Association

The Neighborhood Association shall not initiate any judicial or administrative proceeding without prior approval by Owners entitled to cast seventy-five percent (75%) of the total votes other than those of the Founder in the Neighborhood Association. However, no such approval shall be required for actions or proceedings:

- Initiated during the Period of Founder Control:
- Initiated to enforce the provisions of this Residential Declaration, including collection of assessments and foreclosure of liens:
- Initiated to challenge ad valorem taxation or condemnation proceedings;
- Initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or
- To defend claims filed against the Neighborhood Association or to assert counterclaims in proceedings instituted against it.

# Quick View: The Chancellor, the Board and the President

	The Chancellor	The Board	The President
General Duties	Hears and mediates covenant issues.  Brings the parties together	Makes major policy decisions concerning Neighborhood Association operation, maintenance of the Neighborhood Commons and budgeting decisions.	Makes day-to-day decisions within a scope of authority established in the Bylaws or by the Board.
Covenant Enforcement	to discuss possible covenant violations and mediates an agreement. If the agreement is not reached or is ineffective, the Chancellor may present the problem to the Board.	enforce the covenants through fines, clean-up of Residential Parcels (billed to the Owner), or legal action if necessary. Has the power to approve the use of Chancellor(s) to mediate agreement.	decisions of Board.
Special Qualifications	None unless the Board converts the Chancellors to a paid professional position. Not required to be Owner or Occupant.	None. Not required to be Owner or Occupant.	Must be a member of the Board.
Term of Office	A two-year term. No limit on number of terms.	Staggered two-year terms except during the period of Founder control.	One-year term except during the period of Founder control.

{H0496621.1}

Clift Farm Residential Declaration



# Physical Surroundings: The Neighborhood Commons

The open space, recreational areas and other commonly used portions of the Residential Neighborhood, called the Neighborhood Commons may be owned by the Neighborhood Association. In most cases, the Neighborhood Association will hold title to the Neighborhood Commons in fee simple. In other cases, the Neighborhood Association's ownership may be in the form of easements, leases or other rights. Similarly, open space, recreational and other commonly used portions of the Business District may be owned by the Business Association and are known as the Business Commons. The Neighborhood Association may also have an easement, lease, or other rights in the Business Commons.

## **Community Areas**

Most of the Neighborhood Commons in Clift Farm are intended for the mutual benefit and enjoyment of the community. The Neighborhood Commons of Clift Farm may include parks, open space, paths, tot lots, recreation areas, BMPs and stormwater management facilities, streets and alleys that are not publicly dedicated but are intended for

public use, and sidewalks, street trees. tree/furniture zones, designated on-street parking zones and street lighting that are not dedicated to Madison County or, if dedicated. require a higher level of maintenance than the County provides. Neighborhood Commons may include areas that are privately owned, areas that are publicly owned but maintained by agreement with the Founder and areas that are owned by the Neighborhood Association. Neighborhood Commons shall be maintained in accordance with the environmental standards set forth in the Clift Farm Design Standards. Areas shall become Neighborhood Commons if they are shown on the survey referenced in Exhibit A as Neighborhood Commons or if shown as such in this Residential Declaration or any Supplemental Declaration. The boundary or character of a Neighborhood Commons may be changed by Supplemental Declaration.

### Use of the Neighborhood Commons

Every Residential Parcel Owner in good standing has, and is hereby granted, a nonexclusive easement for appropriate use and enjoyment of the Neighborhood Commons. This easement passes with title to the Owner's Residential Parcel and is automatically extended to tenants, Guests and Occupants provided that (i) the Owner of the property that they occupy shall be responsible for the manner of such use, (ii) the Owner may withdraw consent for such use by written notice to the Neighborhood Association, and (iii) easement may only be used by either the Owner or the Tenant, but not both, except as provided in Section 2.2. The easement is subject to the Neighborhood Association's right of regulation in accordance with this Residential Declaration and is also subject to any limitations that may be contained in the conveyance of that portion of Neighborhood Commons to the Neighborhood Association. There shall be no adverse possession of the Neighborhood Commons by any Owner. Each Owner agrees

{H0496621.1}

Clift Farm Residential Declaration

that he or she shall have no claim of adverse possession and hereby waives any and all such claims he or she may have now or in the future.

Any other member of the public, not an Owner, Occupant, Guest or tenant, shall be deemed a guest of the Neighborhood Association when using the Neighborhood Commons and only the Founder, the Neighborhood Association or its designees shall have the authority to set the rules for the privilege of use of the Neighborhood Commons or suspend or revoke such privileges.

Open-Air Markets, Festivals and Other Events. Clift Farm is intended to be a vibrant community with activity that brings people together. The Board may permit use of portions of the Neighborhood Commons for various events.

As part of these events, the Board may rent or assign space for pushcarts, kiosks, stands or temporary sales structures and may permit the erection of tents and banners. Such uses may be only for special events or on a recurring basis. However, other than where specified in this Residential Declaration, no contract shall be for a period of longer than a year, including all renewal options. Any revenue from events is to benefit the Neighborhood Association or other charitable or community-enriching organization.

Rules of Usage of Community Areas. Use of Neighborhood Commons must be in accordance with this Residential Declaration, the Rules and Regulations, and for the use of parks, the following:

a. An Owner, tenant or Occupant must arrange for the use of parks for any gathering, class, party, wedding or event through the Neighborhood Association. The Neighborhood Association may approve the functions in accordance with the Rules and Regulations and has the right to require evidence of compliance {H0496621.1}

with the requirements of this Residential Declaration and the Rules and Regulations and the right to bar use of the parks by anyone not complying with these provisions in advance or during an event. The Neighborhood Association may bar any Owner, tenant, Occupant or Guest from event use of the parks for a period of up to one (1) year for a violation of this Residential Declaration. After three violations, an Owner, tenant, Occupant or Guest may be permanently barred by the Neighborhood Association. The Neighborhood Association may charge a reasonable scheduling fee to cover costs associated with its duties under this section.

- b. Any Owner, tenant or Occupant conducting an event in a park must take the steps necessary to prevent the event from precluding reasonable use by others of the park; provided that portions of the park may have limited access for a reasonable period as approved by the Neighborhood Association.
- c. Any Owner, tenant or Occupant conducting an event in a park must take the steps necessary to prevent the event or people arriving or departing from the event from unreasonably interfering with traffic around the park or damaging cars parked adjacent to the Any Owner, tenant or Occupant conducting an event in a park must take the steps necessary for the removal of all trash, signs, tables, chairs or other property associated with the event promptly following the event and for generally restoring the park to its pre-event condition as determined by the Board and shall be subject to fees, fines and suspension of use privileges for failure to do so.
- d. Any Owner, tenant or Occupant conducting an event in a park shall be responsible for providing proper trash and recycling receptacles and rest room facilities for the event and for the prompt removal of these receptacles and facilities after the event and the proper disposition of trash and recyclables and may be subject to fees, fines and suspension of

use privileges for failure to do so. Trash disposal shall not be allowed in dumpsters or receptacles in any of the commercial areas of Clift Farm.

e. Any Owner, tenant or Occupant conducting an event in parks shall not charge a fee for access to the park, though fees may be charged for concessions or otherwise in accordance with the Rules and Regulations and applicable law.

Damage or Destruction of Neighborhood Commons. If any Neighborhood Commons or Improvements on a Neighborhood Commons is damaged or destroyed by an Owner, Owner's tenant or Occupant of a Residential Parcel within Clift Farm, or by family members, guests (but not including individuals in Clift Farm as customers or clients of the Owner) or agents of the Owner, tenant or Occupant, the Owner shall be liable for such damage or destruction and the Owner must, within fifteen (15) days after it occurs, repair the damage in a good and workmanlike manner as determined by the Board and restore any damaged Neighborhood Commons, Improvement or facility to its existing state before the damage or destruction occurred. In circumstances where the Neighborhood Association or the Founder determines that a shorter response period is appropriate, the fifteen (15) days period may be shortened. If the Owner does not repair the damage as described above, then the Founder, during the Period of Founder Control, or the Neighborhood Association may repair the damage at the Owner's expense. The Owner may also be charged a management fee if the Neighborhood Association is required to repair the damage on behalf of the Owner because the Owner does not repair the damage. If the damage is unsightly or dangerous determined by the Founder, during the Period of Founder Control, or the Neighborhood Association at its sole discretion, the Founder, during the Period of Founder Control, or the Neighborhood Association has the right to repair the damage immediately and charge the {H0496621.1}

Owner responsible for the damage for the cost of the damage plus a management fee after the repair has been completed. The cost of the repairs becomes a Special Assessment on the Residential Parcel of the Owner and constitutes a lien on the Owner's Residential Parcel. This lien is collectible in the same manner as other Assessments set out in the Residential Declaration. The Founder, during the Period of Founder Control, or the Neighborhood Association may bring an action for damages, specific performance, declaratory decree or injunction, or any other remedy at law or in equity to enforce the provisions of this Section.

Delegation of Use; Sale. Any Owner may temporarily delegate his right of enjoyment in the Neighborhood Commons to any tenants or Occupants of the Owner's Residential Parcel and to its invitees or guests, subject to the terms of this Residential Declaration and any Rules and Regulations established from time to time. This right cannot be conveyed except as an appurtenance to Residential Parcels within Clift The Founder, the Neighborhood Association, or any owner of a portion of the Neighborhood Commons may dedicate or convey all or any part of such area to any public agency or authority with the consent of the Founder or, if the Founder no longer owns any property within Clift Farm, then with the consent of the Board.

Limitation of Liability. The Neighborhood Association is not an insurer of safety and makes no warranty and assumes no liability for any loss or injury in use of the Neighborhood Commons or otherwise.

## Maintenance and Capital Improvements

The Neighborhood Association is responsible for the management, control and improvement of the Neighborhood Commons. At a minimum, the Neighborhood Association must keep the

Clift Farm Residential Declaration

Neighborhood Commons clean and in good repair. The Neighborhood Association may also make capital improvements to the Neighborhood Commons and may modify the uses of the Neighborhood Commons. Any changes to the Neighborhood Commons must be approved in accordance with the architectural review standards of Part 4.

To the extent reasonably necessary, the Neighborhood Association has, and is hereby granted, an easement over each Residential Parcel for maintenance of the Neighborhood Commons. The Neighborhood Association also has, and is hereby granted, an easement with respect to any improvements constructed on the Neighborhood Commons that unintentionally encroach on a Residential Parcel, whether due to any minor deviation from the subdivision plat or site plan within Clift Farm or the settling or shifting of any land or improvements.

#### Roads, Utilities, Drainage

The Neighborhood Association manages the various systems within the community that are part of the Neighborhood Commons. The Neighborhood Association has the benefit of certain easements, and also has the power to grant easements to others, such as granting to a utility company rights for utility installation and maintenance. The following are some of the Neighborhood Association's rights and responsibilities:

Common Road Regulation. To the extent permitted by law, the Neighborhood Association may make Rules and Regulations concerning driving and parking within the Residential District and may construct traffic calming devices as approved by the Board, with Founder approval during the Period of Founder Control, post speed limit or other traffic signs and take any other reasonable measures to discourage excessive speed and encourage safe

driving on the Common Roads. While parking requirements for all uses in Residential District may be set forth in the Madison County code. additional parking requirements, such as limiting parking duration or requiring decals for Owners, tenants or Occupants, may be set forth in an Owner's deed, in a Supplemental Declaration filed on a Residential Parcel, or in the Rules and Regulations. Each Owner. Occupant, and their tenants and guests shall comply with all applicable parking requirements. Any failure to comply shall be a violation of this Residential Declaration as well as a violation of the document creating the parking requirement. To the extent permitted by local government, the Neighborhood Association may enforce any violation in accordance with Part 2 and may tow or boot offenders.

Surface Water or Stormwater Management System. The Neighborhood Association has the power to maintain proper drainage within the Residential District. In the exercise of this power, the Neighborhood Association shall have a blanket easement and right on, over, under and through the ground within the Residential District to inspect, maintain and correct drainage of surface water and other erosion controls. This easement includes the right to cut or remove any vegetation, grade soil or take any other action reasonably necessary for health or safety or to comply with governmental requirements. The Neighborhood Association shall notify affected Owners and Occupants (except in an emergency) and shall restore the affected property to its original condition as nearly as practicable. The surface water or stormwater management system shall be managed as follows:

a. Each Owner of a Parcel in the Residential District shall have the duty to maintain in good repair and working order, all portions and elements of the stormwater management system, including without

{H0496621.1}

Clift Farm Residential Declaration

limitation, cisterns, permeable surfaces, gutters, infiltration devices or areas, rain barrels, rain gardens, green roofs, and biotreatment swales that may be located on the Owner's Parcel unless the Neighborhood Association has agreed in writing to maintain such elements. No Owner shall take any action to modify or diminish the effectiveness of the elements of the stormwater management system located on that Owner's Parcel without prior written approval by the Neighborhood Association. Such Owner shall promptly replace or restore the stormwater management system elements if they are damaged or wear out. Each Owner shall keep the stormwater management system elements on such Owner's property cleaned out as necessary to provide proper performance.

b. The Neighborhood Association has the power to maintain proper drainage and to maintain the stormwater management system within all parts of the Residential District. In the exercise of this power, the Neighborhood Association shall have a blanket easement and right on, over, under and through the ground and all improvements thereupon within the Residential District to: (i) inspect all aspects of the stormwater management system located on an Owner's Parcel. Such inspection right shall include (without limitation) the right to walk on the Parcel, access the roof of any structure on the Parcel, open any trap for rooftop runoff and open and inspect rain barrels (Owner shall provide the Neighborhood Association with keys to all locks on such elements). Other than in emergencies, the Neighborhood Association shall provide not less than 24 hours advance notice of such inspection; or (ii) require Owner to undertake, or where Owner has contracted for the Neighborhood Association to undertake, commence, or where following notice to Owner and Owner's failure to undertake, commence clean up, clean out, removal of sediment, debris or other materials, vacuuming or steam cleaning of permeable surfaces, clearing lines of blockages, planting or removing vegetation,

repair, reconstruction, maintenance or replacement of such elements, provided that the Neighborhood Association, in utilizing the easements and rights provided hereunder, shall use reasonable efforts to avoid damage to grounds and structures. Where landscaping must be removed to restore function of an element of the stormwater management system or where damage cannot be reasonably avoided in utilizing those rights, the Neighborhood Association shall have no liability therefore. The Neighborhood Association shall have neither responsibility nor liability from the functioning of the stormwater management system or its failure to function or the occurrence or failure to occur of the maintenance. repair or replacement contemplated hereunder.

The Neighborhood Association shall notify Owners in writing concerning: (i) maintenance requirements for Owner-owned portions of the stormwater management system and (ii) any non-compliance with those requirements. maintenance Ιf Neighborhood Association determines that an Owner not complying with such is requirements, and the non-compliance continues for ten (10) days after notice to the Owner, the Neighborhood Association shall have the right without liability to enter the Parcel to correct, repair, restore, and maintain any non-compliant portion or element of the stormwater management system located on the Parcel. The Board may reduce or eliminate the time for notice if it believes the condition creates a hazard. All costs related to such actions are to be assessed to the Owner as an Individual Parcel Assessment. The Board may also assess a management fee for activities that it must take to correct, repair, restore, or maintain any part of the stormwater management system on the Parcel on behalf of an Owner. If, in accordance with this section, authorized agents of the Neighborhood Association enter upon any Parcel to abate or

remove a violation, neither the Person entering the Parcel nor the Person directing the entry shall be deemed liable for any manner of trespass for such action.

d. The Neighborhood Association shall have the right to enter into contracts and agreements with Madison County or other public entities allowing the county or such other public entities to exercise the easements and rights of the Neighborhood Association herein provided, if the Neighborhood Association fails to enforce them. The county may also be granted the right to impose the charges for such undertaking as a lien on the Owner's Parcel.

Utility Easements. The Neighborhood Association has a blanket easement upon, across, over, through and under the Residential District for access, installation, replacement, repair and maintenance of all public and private utility and service systems. These systems include, but are not limited to, water, sewer, irrigation, drainage, telephone. intranet. electricity, television, security, fiber optic, broadband, cable or communication lines and other equipment. By virtue of this easement the Neighborhood Association may install and maintain facilities and equipment, excavate for such purposes and affix and maintain wires, circuits and conduits. However, the exercise of this easement must not unreasonably disturb each Owner's reasonable use of his Residential Parcel. If authorized by majority vote of the Board, the Neighborhood Association may assign all or a portion of its rights under this paragraph to one or more utility providers.

Police Powers. The Neighborhood Association has a blanket easement throughout the Residential District for private patrol services and for police powers and services supplied by local, state and federal governments as needed to lawfully carry out their duties, including clearing emergency vehicle access. The

reservation of such easement does not imply that any such service shall be provided.

# Purchase or Conveyance of Neighborhood Commons

Purchase of Neighborhood Commons. The Neighborhood Association may acquire additional Neighborhood Commons. The decision to acquire additional Neighborhood Commons (other than that added by the Founder), whether by purchase or lease or other means, shall be authorized by 60% of the Board. If the purchase or lease is costly enough to be considered a substantial capital expense, it must be approved as described in Part 5.

Sale or Long-Term Lease of Neighborhood Commons. As described elsewhere in this chapter, the Board may rent or assign space in the Neighborhood Commons on a short-term basis for open-air markets, festivals, parties, weddings and other events and may dedicate part or all of the Neighborhood Commons to the public. Although it would be unusual, the Neighborhood Association may sell, donate or grant long-term leases for small portions of the Neighborhood Commons or exchange parts of the Neighborhood Commons for other property inside or outside the Residential District when the Board finds that it benefits the community in at least one of the following two ways:

- The conveyance is intended to benefit the community in ways other than the revenue, if any, to be derived from the transaction. For instance, the Neighborhood Association may convey or exchange property if necessary to improve access to properties within the Residential District or to improve utility service. The Neighborhood Association may also convey property to other community-oriented organizations.
- The revenue to be derived is significant and the use and appearance of the

Neighborhood Commons is not significantly impaired. For instance, the Neighborhood Association might sell or lease small amounts of space for cellular telephone transmission equipment, subject to design approval in the architectural review process.; or, the Neighborhood Association might exchange or sell small portions of the Neighborhood Commons to allow realignment of roads or Parcels.

Otherwise, the Board may not sell or exchange or otherwise dispose of any Neighborhood Commons except to a successor organization conceived and organized similarly to the Neighborhood Association to own and maintain the Neighborhood Commons.

Any decision to donate, sell, exchange or lease any portion of the Neighborhood Commons must be approved by 60% of the Board and, the Design Committee, for as long as the Founder owns any Parcels in Clift Farm. After the Period of Founder Control, if requested by the President, a Board member or ten percent (10%) of all the Residential Parcel Owners by written petitions, a special meeting must be held. Notice requirements for special meetings are described in Part 2 and in the Bylaws. If a quorum is present in person or proxy, the decision to purchase, sell, exchange or lease may be rescinded by a sixty percent (60%) vote of the Residential Parcel Owners present. Any contract with a third party for the purchase, sell, exchange or lease of the Neighborhood Commons should be contingent upon this right of rescission, unless the Board has previously passed a resolution describing the intended transaction and giving notice.

Except as specifically permitted by this Residential Declaration, the Neighborhood Commons cannot be rented or sold.

**Corrective Instruments.** The Neighborhood Association, by approval of 60% of the Board,

may also execute corrective instruments, settle boundary line disputes and resolve other title matters concerning the Neighborhood Commons.

#### Dedication and Condemnation

Dedication is the voluntary conveyance of title to a municipality or other governmental entity, while condemnation is the taking of property by a government or other authority having the power of eminent domain. Any dedication or conveyance is subject to acceptance by the applicable governmental agency.

**Dedication.** If any portion of the Common Roads has not previously been dedicated to the public, the Board may, by majority vote, cause the Neighborhood Association to convey title to or dedicate the Common Roads to the appropriate public authority. Any other dedication of the Neighborhood Commons must be approved in the same manner as a conveyance of the Neighborhood Commons.

Condemnation. If all or any part of the Neighborhood Commons is taken by, or an offer is accepted in lieu of condemnation from, any authority having the power of eminent domain, all compensation and damages shall be paid to the Neighborhood Association. The Board shall have the right to act on behalf of the Neighborhood Association with respect to any negotiation or litigation relating to the offer or taking.

# Association Insurance and Reconstruction

Insurance can protect the Association's assets and financial security. However, insurance is a large and sometimes volatile item in the Association's budget. At least once each year, the Board should review types of insurance and terms and limits of coverage for insurance held

{H0496621.1}

Clift Farm Residential Declaration

by the Association. Changes in replacement costs or anticipated liabilities can make existing insurance coverage inadequate. In rare cases, if coverage becomes too expensive, the Association may make a decision to drop certain coverage or to take a higher deductible.

**Types of Insurance.** The following are examples of insurance the Association should consider:

- Property and Casualty Insurance. The Board shall obtain property and casualty insurance for Neighborhood Commons including structures or other improvements that can and should be insured for damage or other loss. Some policies provide coverage for "all risks" (or "perils") not excluded. Others insure against loss from named perils such as fire, vandalism, malicious mischief, earthquake and wind. If it is available, the Board should consider obtaining flood insurance (if in a floodprone area). Care should be taken that sufficient coverage is obtained to comply with any co-insurance percentage provided for in the policy. Preferably, the policy should stipulate an "agreed value" of the property to avoid the problems presented by co-insurance provisions altogether.
- Commercial General Liability. The Board shall obtain commercial general liability insurance in such amounts as the Board determines, insuring against liability arising out of, or incident to, the membership and use of the Common Areas and any topographic conditions or water access located on or adjoining the Neighborhood. It should seek to extend the coverage to walkways. This insurance should provide that the acts of any given insured, if excluded from coverage, should not preclude coverage for the named insured or other insureds not involved in the acts or behavior triggering the exclusion.

- <u>Director Liability Insurance</u>. The Board may obtain liability insurance insuring against liability for actions taken by members of the Board, officers of the Association and advisory members in the performance of their duties. The Board may also obtain fidelity insurance for its employees.
- Other Coverage. The Board shall obtain and maintain workman's compensation insurance if and to the extent necessary to meet the requirements of law and such other insurance as the Board may determine or as may be requested from time to time by a majority vote of the Residential Parcel Owners.

Repair and Reconstruction after Fire or Other Casualty. If Improvements on the Neighborhood Commons are damaged, the Board shall arrange for and supervise prompt repair and restoration of the Improvements. The Board obtains funds for repair on reconstruction first from the insurance proceeds, second from reserves for the repair and replacement of such Improvements, and third from any Special Assessments that may be necessary.



# Physical Surroundings: Private Domains

The design for Clift Farm is intended to maximize land usage and sense of community by providing gracious squares and parks while offering intimate and private yards and gardens for individual use. Clift Farm generally follows principles of traditional neighborhood design, which uses the individual houses and other buildings to form the streetscape. Their facades help form the walls of "outdoor rooms" - comfortable spaces where residents can enjoy walking, playing and relaxing.

This chapter enables some of the special design considerations of traditional neighborhood development through easements and other provisions concerning the buildings and lots. A related chapter, Part 2.2, provides covenants for daily living.

## Relationship Between Residential Parcels

As provided by the Clift Farm Design Standards, certain buildings within the Residential District may be attached townhouses or the dwellings may be detached but placed on or near the property line. The easements in this section are intended to enable reasonable cooperation

between neighboring Owners. The Neighborhood Association may make rules for maintenance and use of easement areas and shared Improvements that are to be uniformly applied to all similarly configured Residential Parcels.

Residential Parcel Lines. The re-subdivision of any Residential Parcel or the separate conveyance of any part of a Residential Parcel other than as an easement is prohibited except if performed by the Founder. The specific consent of the Design Committee is required to otherwise modify the boundary lines of any Residential Parcel. Additional approval by Madison County or the appropriate municipality may also be required.

Structural Party Walls. Each Owner grants to the Owner of each adjacent Residential Parcel the right and easement to maintain and to utilize any exterior or interior wall that forms a party wall between them. A wall will be considered a party wall only if it provides structural support for the buildings, or parts of a building, on more than one Residential Parcel. Maintenance of each surface of the party wall shall be the sole responsibility of the Owner whose building faces such surface. Each Owner shall be liable and responsible if, in connection with that Owner's use and maintenance of the party wall, the Owner damages the adjacent Owner's building or the wall itself. The cost of any other repairs to the party wall shall be shared equally by the adjacent Owners.

Exterior Walls. An exterior wall which supports the building on only one Residential Parcel, or which encloses a courtyard on one Residential Parcel, shall not be considered a party wall. The Neighborhood Association may make Rules and Regulations concerning use and maintenance of such walls, including assigning responsibility between the adjoining Owners for painting and repair and granting access over the adjoining Residential Parcel as reasonably

{H0496621.1}

Clift Farm Residential Declaration

necessary to maintain the wall. All such maintenance and repair shall be in accordance with the Neighborhood Association's Rules and Regulations.

Yard Easements. To allow the most efficient use of a Residential Parcel while complying with governmental setback requirements, a portion of a Residential Parcel along a lot line may be subject to an easement for use by the adjoining Residential Parcel Owner. The Owner of a Residential Parcel subject to such an easement will usually be the beneficiary of a similar easement burdening another Owner's Residential Parcel, unless the Residential Parcel is a corner lot or is larger than the adjoining Residential Parcel. Such easements may be designated on the plat, in the Clift Farm Design Standards or recorded in the deed from the Founder to the first Owner of the burdened Residential Parcel. Such easement area may be up to four (4) feet wide and shall run along a boundary line. Subject to regulation under the Clift Farm Design Standards, the beneficiary of such an easement shall have the use and maintenance responsibility for the easement area and, subject to this Part 3, may place fences and other non-permanent fixtures (but not primary structures or above ground HVAC equipment, decks, or other permanent fixtures) upon the easement area. If the Neighborhood Association or utility provider needs access to the easement they shall not be liable for damage to any fences or non-permanent structures located within the easement.

Roof Overhang; Footings. For certain building types, such as side yard houses, which are to be built along a property line, the Clift Farm Design Standards may permit roofs, gutters, soffits, downspouts and other features to overhang this property line and may allow footings and rain leaders to intrude into the adjacent property. To the extent allowed by the Clift Farm Design Standards and local governmental regulations, the adjacent property shall be subject to an

easement for such intrusion. However, roofs, gutters, downspouts and rain leaders may not discharge water onto the surface of the adjacent property as a point source.

Townhouse or Row House Roof. If a townhouse or row house wall or parapet exists along or very near a property line, the Owner of the townhouse or row house to be constructed on the adjacent property shall have the right to flash into the existing building in accordance with industry standards in order to make the new building watertight. This right includes the right to make minor cuts on the existing building and to secure flashing or other materials to the existing building, so long as the structural integrity and water tightness of the existing building is not impaired. The cost of this flashing shall be borne by the Owner of the new building. but the maintenance of this connection shall be a shared expense between adjacent property Owners.

Zero Lot Line Easements. Tα allow maintenance, construction, or repair structures on an adjoining Parcel while complying with governmental setback requirements, a portion of a Parcel along a lot line may be subject to an easement for use by the adjoining Parcel Owner. The Owner of a Parcel subject to such an easement will usually be the beneficiary of a similar easement burdening another Owner's Parcel, unless the Parcel is a corner lot or is larger than the adjoining Parcel. Such easements may be designated on the plat, in the Clift Farm Design Standards or recorded in the deed from the Founder to the first Owner of the burdened Parcel. Such easement areas may be up to ten feet wide and shall run along a boundary line and may be used by the adjoining Owner to conduct maintenance, construction, or repair of structures on that adjoining Parcel. The adjoining Parcel Owner shall use best efforts to avoid destruction of vegetation within the easement area. adjoining Parcel Owner must provide the Owner

of the Parcel subject to such an easement with fourteen days prior written notice before using the easement for maintenance, construction or repair activities.

#### Owner Insurance

The loss of a building due to fire or other casualty affects the entire block. Insurance is necessary to make sure that each Owner has the funds available to rebuild after a casualty.

**Residential Parcel Coverage.** Each Residential Parcel Owner shall obtain casualty

insurance for Improvements on its Residential Parcel. Coverage shall be in an amount not less than necessary to comply with the co-insurance percentage stipulated in the policy, but in any event not less than eighty percent (80%) of the value (based upon replacement cost) of the insurable improvements constructed on the Residential Parcel. If requested by the Neighborhood Association, an Owner shall provide evidence of such insurance to the Neighborhood Association.

# **Quick View: Acquisition and Conveyance of Neighborhood Commons**

	Purpose:	Approval Process:
Acquisition of Additional Neighborhood Commons	Benefit to Neighborhood.	Authorized by 60% of the Board.
Grant of Easements	Provision or improvement of utility services.	Board may approve easements to utility providers by majority vote.
Short-Term Rental or Assignment of Portions of Neighborhood Commons	Events such as farmers' markets, festivals, block parties or private parties.	Board approval.
Sale, Donation or Long- term Lease of Portions of Neighborhood Commons	Beneficial use for community or significant income without significant impairment of Neighborhood Commons.	60% of Board and the Design Committee and Founder subject to Owners' right of rescission after the Period of Founder Control.
Dedication or Condemnation of Portions of Neighborhood Commons	Conveyance to a municipality or other governmental entity.	Board may approve dedication of streets by majority vote and may negotiate regarding condemnation. Other dedication subject to the same approval requirement as for a sale of Neighborhood Commons.
{H0496621.1}		

Clift Farm Residential Declaration

24

Instrument #: 2019-00083282 Seq: 28



# Architectural Review: Clift Farm Design Standards; Town Architect;

Improvements within Clift Farm will be designed and built by different homeowners, architects and builders. Each of these individuals will contribute to the shaping of the community.

The Clift Farm Design Standards communicate the basic elements that are essential for creation of this residential community. They are intended to conform to "traditional neighborhood" or urban design principles and contain features of both a conventional architectural code and a zoning code.

The architectural review process, set out in Part 3 of the Community Operating Agreement, concerns all portions of the Clift Farm Design Standards.

Copies of the Clift Farm Design Standards are available from the Neighborhood Association, the Design Committee or the Founder. Because the Clift Farm Design Standards may change from time to time, it is important that an Owner obtain approval based on the current version of the Design Standards before undertaking any change or improvement of his property. {H0496621.1}

#### Town Architect

The Founder may appoint a Town Architect, whose job it is to understand, interpret and, when necessary, modify the Code. The architect who designs the master plan for the community will not necessarily be named the Town Architect. The Town Architect is not responsible for designing individual houses but can facilitate the design of houses consistent with the overall design vision for the neighborhood. The Town Architect must have a professional degree in architecture or urban design from an accredited university or comparable qualifications and must have experience or training traditional in neighborhood or urban design, or other qualifications deemed appropriate by the Founder. The Town Architect does not, however, need to be licensed to practice in Alabama.

### Founder and Design Committee Roles

The community attracts its residents based on the anticipation that it will, in general, be constructed in accordance with the Founder's The Clift Farm Design Standards represent a component of that vision. No Improvement will be made, expanded or altered, nor building permit for construction, expansion or alteration of an Improvement sought without written approval of the Improvement's construction, expansion or alteration by the Design Committee. The Design Committee will review construction, expansion or alteration of Improvements using the Clift Farm Design Standards procedures set forth in the Community Operating Agreement, as it is amended from time to time. The Design Committee has the sole and absolute ability to review and approve applications.

Clift Farm Residential Declaration



# Architectural Review: Review Process

Initial construction is dramatic, as each street takes shape. The facades of the buildings and the streetscape landscaping form the community's outdoor rooms, and the community described by the Clift Farm Design Standards springs to life.

Clift Farm is not, however, frozen in time. A neighborhood evolves after initial construction. Homes are enlarged to suit a growing family. A tree falls and must be replaced. Children clamor for swimming pools. A puppy requires a fenced yard. The questions surrounding modification review concern not just design but compatibility with adjacent properties.

The Community Operating Agreement outlines the method for review of both initial construction and modifications to ensure that as Clift Farm matures it continues to follow the vision set out in the Design Guidelines. In the event of any conflict between this Residential Declaration and the Community Operating Agreement, the Community Operating Agreement shall prevail. While the Founder and the Design Committee manage the architectural approval process, enforcement may be by the Founder or Design Committee under the Community Operating Agreement or by the Neighborhood Association this under

Residential Declaration or by all of these entities.

#### **Enforcement**

By taking title to property in the Residential District, Owners have agreed to the provisions of this Residential Declaration and other recorded instruments placing certain restrictions on the use of the property. Alabama courts have consistently enforced architectural review requirements contained in recorded instruments.

In addition to the enforcement provisions in the Community Operating Agreement, if any construction or installation is begun which has not been approved or which deviates from approved plans and specifications, the Board may by majority vote approve any of the following actions on behalf of the Neighborhood Association:

- Require the Owner to resolve the dispute through binding arbitration;
- Seek an injunction requiring the Owner to immediately stop construction and remove or correct any improvements that are not in compliance with approved plans;
- Bring suit seeking other remedies, including any combination of damages, specific performance, declaratory decree and/or permanent injunction or other remedy at law or in equity; and
- File liens.

The right to seek an injunction is the most powerful tool available to the Neighborhood Association. Money damages are usually an inadequate remedy for failure to comply with architectural review provisions as it is difficult for the Neighborhood Association to prove the financial damage caused by an Owner's failure to comply with Design review provisions.

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However, an injunction gives the Neighborhood Association the ability to require an Owner to comply with the approved plans and specifications, regardless of a lack of financial damage and regardless of the cost to the Owner of making such a change.

For instance, if an Owner specifies one type of windows in the approved plans and specifications, but then substitutes another during the course of construction, it can be quite expensive for the Owner to remove the incorrect windows and replace them with the correct windows. The power to require that change is the greatest tool the Neighborhood Association has to keep the Owner from succumbing to the temptation to substitute unapproved windows. Unless the recorded documents allow this powerful tool, a court might hesitate to grant such a remedy.

If the Neighborhood Association brings suit and the court finds that the construction was not approved or that the construction deviated from the approved plans or specifications, then the Neighborhood Association shall also be awarded reasonable attorney's fees and costs, even if the relief requested is not granted.

The Design Committee may require the builder or Owner to post a deposit from which the Design Committee or the Neighborhood Association may deduct published fines and costs of rectifying the deviation for failure to comply with the approved plans and specifications and rules for builder conduct. The collection of a fine shall not in any way diminish the available remedies at law or equity.

Failure to enforce any provision of this Part shall not be deemed a waiver of the right to do so at any time thereafter. It is expressly provided that the Design Committee has the power and authority to waive the requirement or enforcement of any of the Covenants set forth herein.

Notice to Owners: The contract for the construction or modification of a home is negotiated between the Residential Parcel Owner and the contractor. Neither the Founder, the Design Review Committee nor the Residential Association is a party to that contract. Owners are ultimately responsible for assuring that the improvements constructed on the Residential Parcel are in accordance with the approved plans and specifications. Because the Clift Farm Design Standards and the applicable provisions of the Community Operating Agreement may change from time to time, it is important that an Owner obtain or confirm that he or she has the current version of the Clift Farm Design Standards, the Rules and Regulations and the applicable provisions of the Community Operating Agreement before undertaking any change or improvements of the property. For the Owner's benefit, contracts should require the contractor to build or modify the improvements in accordance with plans and specifications approved by the Design Committee. Receipt of the Design Committee's Certificate of Completion and Release indicating compliance with the approved plans and specifications should be a condition of final payment on the contract.

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Clift Farm Residential Declaration

# **Quick View: The Town Architect and the Design Committee**

	Town Architect	Design Committee
Role	Helps to interpret the Code and helps Owners comply. Suggests modifications when appropriate. May sit on the Design Committee.	Reviews applications for new construction and modifications to existing improvements.
How Selected	Selected by the Founder.	The Town Architect is typically a member and the Founder may select the balance of the representatives. Once the Founder can no longer appoint or chooses not to appoint the members of the Design Committee, the members shall be selected as follows: The new Design Committee shall consist of either three or five members. For a three-member Design Committee, the Neighborhood Association and the Business District Association shall each appoint one member to the Design Committee. For a five-member Design Committee, the Associations shall each appoint two members. The Founder may appoint the final members of the Design Committee, but if it chooses not to do so, the remaining Design Committee members shall choose the additional members.
Qualifications	Must have a professional degree in architecture or urban design from an accredited university or comparable qualifications, or qualifications deemed appropriate by the Founder.	No requirements.
Primary Source of Funds	Salary as determined by Board.	Application fees are to cover cost of Parcel plan reviews. The Founder pays for work on its behalf. After the period of Founder control, the Associations fund any deficit based on the relative percentage of residential and commercial plan reviews.

{H0496621.1}

Clift Farm Residential Declaration



# Finance: The Neighborhood Association Budget

The Board is responsible for managing the Neighborhood Association's financial affairs. Although the Directors cannot be expected to make perfect decisions, the Directors are required to act in accordance with good faith judgment concerning the best interests of the Neighborhood Association.

### Accounting

The Neighborhood Association has two kinds of accounts: operating funds and reserve funds. Operating funds must be easily accessible and are used for day-to-day expenses. Reserve funds are the Neighborhood Association's savings and are to be invested to pay for major repair and replacement of the Neighborhood Commons.

The Neighborhood Association must prepare annual statements of its income and expenses, which are to be made available to each Owner. Unless required by law or the Board, annual statements do not need to be audited.

## **Budget**

Financial planning begins with the annual budgeting process. The fiscal year of the Neighborhood Association begins January 1 of {H0496621.1}

each year and ends on December 31 of that year, unless the Board selects a different fiscal year. The Board may appoint a committee to undertake the preparation of the budget. The budget is adopted by majority vote of the Board. At least one month before the fiscal year to which the budget applies, the Board shall send to each Owner, or post on its web site, a copy of the budget and notice of the amount of the General Assessment each Owner will owe.

Balancing a Budget. Like any budget, the Neighborhood Association's budget has two main categories: expenses and income. The Board is responsible for estimating the expenses of the Neighborhood Association for the upcoming year and then setting General Assessments—the Neighborhood Association's main source of income—at a level high enough to pay for the anticipated expenses. (The Neighborhood Association may have other minor income sources, such as interest on its accounts and rentals income.)

Expenses. Some of the expenses to be included in the budget are mandatory, such as taxes, insurance and required maintenance of the Neighborhood Commons. Anticipated fees for professional management of the Neighborhood Association, accounting services, legal counsel and other professional services must also be included in the budget. The Neighborhood Association also needs a certain amount of working capital—the cash flow necessary to make sure bills can be paid on time. Reserves, as discussed further below, should be considered. The Board may add to the budget the cost of improvements it would like to make to the community.

Budget Review. If General Assessments on Residential Parcels are to be increased by more than fifteen percent (15%) per Residential Parcel when compared to the previous year's General Assessment, and within thirty (30) days after the budget is delivered to Residential

Parcel Owners, review is requested by the President, the Board or by petitions signed by at least sixty percent (60%) of all Residential Parcel Owners, the Board is to call a special meeting to present the budget and to answer any questions. After presentation, the budget is deemed approved unless a quorum of the Residential Parcel Owners is present, and a majority of the voting interests reject the budget. If the budget is rejected, the Board must approve a new budget within thirty (30) days and send a copy to each Owner. If, under the new budget, the General Assessments are to be increased by more than fifteen percent (15%) per Residential Parcel, then the budget must be reviewed again according to the provisions of this paragraph.

Interim Rules. If the budget is challenged or if for any other reason the Board is late in approving the budget, Residential Parcel Owners are not released from their obligation to pay General Assessments whenever the amount of such assessments is finally determined. Until a new budget is approved, each Residential Parcel Owner must continue to pay the assessment at the rate established for the previous fiscal year.

#### Reserves and Deferred Maintenance

Although not required, it is recommended that the Neighborhood Association establish reserves for deferred maintenance, which are significant expenses that occur infrequently (in most cases, no more frequently than every five years). Without sufficient reserves, the Neighborhood Association will be required to levy a Special Assessment when these major expenses arise. Costs that occur more frequently or that are less expensive can probably be handled as an ordinary expense, although reserves may be established for these costs as well.

**Using Reserves.** When it is time to perform deferred maintenance, the Board can authorize

use of the appropriate reserve fund. Reserve funds are an estimate; sometimes one reserve fund will have excess funds while another will not have enough. If specifically authorized by the Board, reserves set aside for one purpose may be used for another purpose. (For instance, money set aside for resurfacing streets may be used for re-roofing a building.)

Calculating Reserves. The amount of reserve required is based on the life expectancy of the item, its replacement cost and the amount of money already in the fund. Different items will require different calculations and different reserve funds. Once the amount of the reserve is determined, the reserve funds may be included in the budget and funded each year from General Assessments.

Investing Reserves. Although separated for the Neighborhood Association's internal bookkeeping purposes, the various reserve funds can be deposited in a single bank or investment account, to be invested in a prudent Because the reserves are Neighborhood Association's savings, reserves must be kept in an account separate from the Neighborhood Association's operating account. After the period of Founder Control, the Neighborhood Association's reserve account shall require more than one signature to be accessed.

Excess Reserves. If there is an excess of reserves at the end of the fiscal year, the Board may decide to reduce the following year's assessments for reserves. If sixty percent (60%) of the Board determines (by vote) that a reserve is no longer necessary for its original purpose, the Board may assign all or part of the funds to a reserve for another purpose or allocate the funds to the Neighborhood Association's operating account.

## Unanticipated or Extraordinary Expenses

Sometimes extraordinary expenses will arise during the year that the Neighborhood Association has no choice but to pay. This may include any unexpected expenditures not provided by the budget or unanticipated increases over the budgeted amounts. If insurance rates rise dramatically, an insurance bill may be much higher than budgeted. A casualty may cause extensive landscape damage that is not covered by insurance. When the Neighborhood Association is faced with an expense that cannot be paid from operating funds, it has two choices:

Special Assessment. The Board may impose a Special Assessment for any unusual or emergency maintenance or repair or other expense that this Residential Declaration or the law requires the Neighborhood Association to pay, or for deferred maintenance or replacement for which reserves are insufficient. Special Assessments require approval by sixty percent (60%) of the members of the Board. The Board may choose to spread the Special Assessment over a period of up to five years.

Using Reserves. If specifically authorized by the Board, reserves may be used for extraordinary expenses that are not included in the annual budget. However, rebuilding that reserve should be a priority in the next budget. A Special Assessment may be used to pay back the reserve fund.

## Capital Improvements

Most of the Neighborhood Association's expenses for the Neighborhood Commons are considered maintenance – repairing and replacing original improvements. However, the Neighborhood Association may wish to change or add to the Neighborhood Commons' facilities.

Not all capital improvements are expensive. These changes can be as small as a new park bench or as large as a new building. (Conversely, not all major expenses are capital improvements: resurfacing a swimming pool is deferred maintenance. not a capital improvement.) Alterations new and improvements, except those proposed by the Founder, must go through the architectural review process.

Neighborhood Association expenditures for capital improvements shall be approved by the Board without membership approval. However, any Substantial Capital Improvement to the Neighborhood Commons approved by the Board after the Period of Founder Control must be ratified by a majority of the Residential Parcel Owners. A capital improvement will be considered substantial if the cost to the Neighborhood Association of the improvement is more than six percent (6%) of the Neighborhood Association's annual budget or if, when added to other capital improvements for the fiscal year, the sum is more than ten percent (10%) of the Neighborhood Association's annual budget. If the capital improvement is approved, the Board shall determine whether it is to be paid from General Assessments or by Special Assessments, which the Board may spread over a period of time up to five years.

## **Zone Expenses**

Zones are intended to provide a flexible means for providing additional maintenance or capital improvements to a portion of the Residential District that has special needs. Zone boundaries may be designated at the time of the addition of the property by Supplemental Declaration or at any later time by the Board. Some expenses apply only to a certain Zone within the Residential District:

 <u>Capital Improvements</u>. The Board may, by majority vote, assess all Residential Parcel

Owners within the Zone for capital improvements to Neighborhood Commons that will primarily benefit that Zone.

 Additional Services. The Board may, by majority vote, vote to assess all Owners within the Zone for maintenance or services in addition to those normally provided by the Neighborhood Association. For landscape maintenance, the Board may define a Zone by Residential Parcel type and may approve landscape service for that Zone.

If the assessment is approved, it will be assessed to and allocated among all Owners within that Zone or designated group as Individual Residential Parcel Assessments.

#### Sub-Area Assessments

Provided that they are created before conveyance of Parcels to Owners other than the Founder or its designees, the Board may create Sub-Areas within the Residential District for assessment of expenses to specific Parcels but not others, for capital improvements or operating expenses. The Neighborhood Association may levy Sub-Area Assessments in accordance with the documents creating the Sub-Area Zone which shall be filed as a supplement to this Residential Declaration.

#### Contract for Maintenance

The Neighborhood Association may, but is not obligated to, act as agent for a Residential Parcel Owner, if so requested by that Owner, to contract for routine maintenance and other services not required to be provided by the Neighborhood Association, the cost of which will be assessed to that Owner as an Individual Residential Parcel Assessment. The terms and conditions of all such contracts are at the discretion of the Board. The Neighborhood

Association may enter into contracts with members of the Board or their companies. However, when the Board considers the contract, the Director should disclose the interest in the company. In addition, a majority of the remaining uninterested Directors must authorize, approve, or ratify the contract (except that a single Director may not authorize, approve, or ratify such a transaction) and the terms of such contracts must be fair and reasonable—in general, comparable to what would be charged by an outside company.

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Clift Farm Residential Declaration



## Finance: Assessments

The cost of meeting the Neighborhood Association's expenses is divided among all the Residential Parcel Owners by the assessments levied on Residential Parcels.

#### Allocation of Assessments

Residential Parcel Type	Relative Value
Single Family	1.0 per Residential Unit
Condominium Multi-Family	1.0 per Residential Unit
Non-Sold Founder Parcels	0 per Residential Unit
Apartment Multi- Family (from Business Association)	Special access fee

The common expenses of the Neighborhood Association are to be allocated among the Residential Parcels in accordance with the relative values described in the adjacent table. The allocation of the common expenses of the Neighborhood Association may be calculated for each Residential Parcel by dividing the relative value assigned that Residential Parcel, as shown in the adjacent table, by the sum of the values of all Residential Parcels within the {H0496621.1}

Residential Neighborhood. These are the Assessment Interests.

A single outbuilding with a studio or onebedroom apartment is not subject to separate assessment if the primary residence on the Residential Parcel is assessed at 1.0 or greater.

If an Owner combines two Residential Parcels or parts of Residential Parcels and uses them as a single Residential Parcel, the Neighborhood Association will continue to assess them as two Residential Parcels.

Exempt Community. The following portions of the Residential Neighborhood shall be exempt from the Assessments and liens created herein: (i) all property owned by the Founder, (ii) all properties dedicated to and accepted by a public authority, (iii) all Neighborhood Commons, and (iv) any Residential Parcel deemed exempt pursuant to the Paragraph below regarding Non-Profit Entities and builders. Collectively, the property referred to in items (i) through (iv) of the preceding sentence shall constitute the "Exempt Community."

Non-Profit Entities. Residential Parcels that are used by non-profit entities primarily for the benefit of residents of Clift Farm may have a zero allocation if granted as described in this paragraph. The Founder may grant such exempt status of record at any time up to and including the time of conveyance of the Residential Parcel to someone other than the Founder. Once granted, such exempt status continues so long as the use of the Residential Parcel remains substantially the same. The Board also has the authority to grant exempt status for qualified entities and builders upon terms and conditions established by the Board.

**Determination** by Neighborhood Association. The Board, using reasonable discretion, has the authority to determine the type of Residential Parcel and may establish

Clift Farm Residential Declaration

rules for the assessment of unimproved lots, determination of residential and commercial use and other matters relating to assessment. The Neighborhood Association's agent may enter and examine buildings at reasonable times for assessment purposes. An Owner shall have the right to a hearing before the Board to appeal an assessment evaluation; however, the decision of the Board after the hearing is final.

#### Transfer Fees

Certain assessments are paid upon the conveyance of Parcels:

- Capital Contribution. At the closing and transfer of title of each Residential Parcel to the first Owner other than the Founder or a builder, for resale, the purchasing Owner shall contribute an amount equal to three months' installments of the General Assessment (a "Capital Contribution"). This contribution is to be deposited in the general funds of the Neighborhood Association for start-up expenses of the Neighborhood Association and for working capital for the Neighborhood Association, the cash flow the Neighborhood Association needs to pay its bills while waiting to collect Assessments and shall not be considered as a pre-payment of General Assessments.
- Transfer Fee. The Board shall establish a fee to be paid to the Neighborhood Association by the purchaser of any Lot on transfer or conveyance of such Lot from time to time (the "Transfer Fee"). The amount of such Transfer Fee shall be one-half percent (0.5%) of the consideration for such transfer, or such other amount or percentage as otherwise established by the Board from time to time. The Transfer Fee shall not be due on any closing of a Lot in which the Capital Contribution is paid. The Founder may, by Supplemental Declaration, contract, or otherwise, exempt certain

properties from the Transfer Fee, limit the payment of the Transfer Fee to certain transactions, or otherwise alter the general obligations set forth hereunder.

The Capital Contribution or Transfer Fee (if then applicable) is not required to be paid by an institutional first mortgagee who acquires title as the result of a foreclosure or deed in lieu but shall be paid by a third-party purchaser at foreclosure or upon the conveyance by the mortgagee to a subsequent Owner.

#### Collection of Assessments

Each Owner is required to pay all Assessments (General Assessments, Special Assessments, Individual Residential Parcel Assessments, Zone Assessments, Capital Contribution and Sub-Area Assessments) assessed to that Residential Parcel. Dissatisfaction with the Neighborhood Association is not a legal defense to an Assessment collection case. Other avenues, such as discussion at meetings, volunteering for committees or running for the Board, are available to improve the Neighborhood Association's performance. The Neighborhood Association has the right to institute reasonable policies concerning late fees and interest, which such Owner is also required to pay. Neighborhood Association may require Owners who are delinquent in paying their Assessments to pay Assessments on a pro-rated monthly or quarterly basis.

Owners pay Assessments in the manner and on the dates the Board establishes. The Board may require advance payment of Assessments at closing of the transfer of title to a Parcel and may impose special requirements, including pro-rated monthly or quarterly payments for Owners with a history of delinquency. The Board may elect to have Assessments paid annually, quarterly, or monthly. However, unless the Board establishes otherwise by Rule

{H0496621.1}

Clift Farm Residential Declaration

or Regulation, Assessments shall be paid in annual installments.

Collection Costs. If any Assessment is still delinquent ten days after the Neighborhood Association has delivered a warning letter to the Owner's last known address, or e-mail address, the Neighborhood Association has the right to also charge the Owner with the Neighborhood Association's collection costs, including reasonable attorney's fees, whether or not suit is brought. The Neighborhood Association may also establish late fees for delinquent payment of assessments.

Legal Remedies. The obligation to pay Assessments and costs is both a personal obligation of the Owner and a lien on the Residential Parcel. (The past-due Assessments, plus late-fee, interest to the time of collection

and the Neighborhood Association's attorney's fees and other collection costs are called the "Assessment Charge.") The Neighborhood Association may bring an action at law against the Owner. personally obligated to pay the Assessment Charge or may foreclose the lien in the manner permitted by the Alabama Homeowners Association Act, or both.

Personal Obligation. The Assessment Charge shall be the personal obligation of the person or entity that was the Owner of the Residential Parcel at the time when the

Assessment Charge was levied, and of each subsequent Owner. No Owner may waive or otherwise escape liability for Assessment Charge by abandonment of the Residential Parcel.

Creation of Lien. The Assessment Charge shall also be a continuing lien upon the Residential Parcel against which the Assessment Charge is made. This lien, in favor of the Neighborhood Association, shall secure the Assessment Charge which is then due, and which may accrue subsequent to the recording of the claim of lien and prior to entry of final judgment of foreclosure. The Neighborhood Association may file a lien with the Probate Judge of Madison County, Alabama, if any Assessment remains unpaid for thirty (30) days. Any subsequent Owner of the Residential Parcel

shall be deemed to have notice of the Assessment Charge. The lien shall be prior to all other subsequent liens encumbrances except (i) real estate tax liens Residential Parcel, (ii) liens

and

that

and

encumbrances recorded prior to the recordation of the Residential Declaration, and (iii) sums unpaid on and owing under anv

deed of trust

Notice to Purchasers: If there are any unpaid Assessments on the Residential Parcel, you will automatically become liable for those Assessments when you accept a deed. You should contact the Neighborhood Association before purchasing a Residential Parcel to make sure Assessments are owed. You should also inquire about Special Assessments which may have been assessed but which are not yet owed.

The Treasurer of the Neighborhood Association or managing agent if one has been employed by the Board, upon request of any Owner or contract purchaser, will furnish a certificate signed by a member of the Board or individual designated by the Board stating whether assessments are paid to date by that Owner and whether any Special Assessments have been levied. Such a certificate. when signed by the appropriate individual designated by the Board, may be relied upon by a good faith purchaser or mortgagee. Neighborhood Association may charge an amount for such statements in accordance with the Alabama law.

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or

mortgage

recorded prior to the perfection of the lien for Assessments. The provisions of this paragraph do not affect the priority of mechanics' and materialmen's liens.

The Neighborhood Association may bid for an interest in any Residential Parcel foreclosed at such foreclosure sale, may acquire a Residential Parcel, and may subsequently hold, lease, mortgage and convey the acquired Residential Parcel.

**Other Remedies.** The Neighborhood Association shall have the right to suspend the

voting rights and the right to prohibit the use of the Neighborhood Commons by an Owner and may prohibit the leasing of the Residential Parcel for any period during which any Assessment against the Residential Parcel remains unpaid. In addition to any other remedies provided by this document for the nonpayment of assessments, the Neighborhood Association shall have all other rights at law or equity against delinquent Owners.

## **Quick View: Types of Assessments**

	What it's for	How it's assessed
General Assessments	All of the regular, budgeted expenses of the Neighborhood Association, including the establishment of reserves.	Annually, payable in installments, based on the budgeted expenses of the Neighborhood Association.
Special Assessments	Capital improvements approved by the Board, or any unusual or emergency maintenance or repair or other expense that the Neighborhood Association is required to pay and for which there is not enough money in the reserves.	As needed. At the discretion of the Board, payment of a Special Assessment may be spread over a period of time, up to five years.
Individual Residential Parcel Assessment	Any special services to that Residential Parcel or any other charges designated in this Residential Declaration as an Individual Residential Parcel Assessment.	As needed.
Zone Assessments	Any services for a particular Residential Parcel in a specific Zone.	As needed.
Capital Contribution	Start-up expenses and working capital for the Neighborhood Association.	Payment equal to three months General Assessments upon sale to first Owner.
Sub-Area Assessments.	Any capital or services related to a specific area and not others.	As needed.

{H0496621.1}

Clift Farm Residential Declaration

36

Instrument #: 2019-00083282 Seq: 40

File Number: 201900083282 Page 40 of 64



## The Future

It is impossible to envision all the things that might happen as Clift Farm grows and matures. This Residential Declaration tries to give the residents the tools and flexibility they need to confront issues as they arise.

# Additional Neighborhood Association Powers

To the extent permitted by law, the Neighborhood Association may, but is not obligated to, provide the following services or engage in the following activities:

- Provide water, sewer, irrigation systems, drainage, telephone, electricity, television, security, cable television or communication lines and other utility services; supply of irrigation water; garbage and trash collection and disposal; laundry equipment or service;
- In the Neighborhood Commons and in areas other than the Neighborhood Commons, provide natural systems management, insect and pest control, improvement of vegetation and wildlife conditions, pollution and erosion controls:

- Emergency rescue, evacuation or safety equipment; fire protection and prevention; lighting of common roads which are not dedicated roads; restricted or guarded entrances, traffic and parking regulation and security patrols within the Residential Neighborhood;
- Transportation; day care and child care services; landscape maintenance; and recreation, sports, craft and cultural programs in areas other than the Neighborhood Commons; and newsletters or other information services;
- Maintenance of easement areas, public rights-of-way and other public or private properties if their deterioration would affect the appearance of or access to the Residential neighborhood; and
- Any other service allowed by law to be provided by a property owners' association organized under the Alabama Homeowners Association Act.

The Board may, by majority vote, initiate or terminate any of the above services, which shall take effect sixty (60) days after notice to the Residential Parcel Owners, except in an emergency. As determined by the Board depending upon the nature of the service, the cost of any such additional service may be part of the common expenses of the Neighborhood Association, may be assessed as an Individual Residential Parcel Assessment to affected Residential Parcels or may be provided on a feefor-service or other reasonable basis as determined by the Board.

#### Amendment

The Founder may amend this Residential Declaration (i) to conform to the requirements of the Federal Home Loan Mortgage

{H0496621.1}

Clift Farm Residential Declaration

Corporation, Veterans Administration, Federal National Mortgage Neighborhood Association or any other generally recognized institution involved in the guarantee or purchase and sale of mortgages, (ii) to conform to the requirements of institutional mortgage lenders or title insurance companies, (iii) to clarify the Residential Declaration's provisions or correct errors or inconsistencies, (iv) to subject additional property to this Residential Declaration or in connection with Supplemental Declarations or to withdraw property from the Residential Neighborhood, (v) to change a name pursuant to the Community Operating Agreement, (vi) to conform to any law then in effect, or (vii) for any reason during the Period of Founder Control as Founder may reasonably deem necessary or appropriate.

The Founder may amend this Residential Declaration without approval by the Residential Parcel Owners or the Board during the Period of Founder Control. This Residential Declaration may also be amended at any time after the Period of Founder Control by an instrument signed by the President or Vice President and Secretary of the Neighborhood Association, certifying approval in writing by Owners representing two-thirds (2/3) of the voting rights, with the following limitations:

- Provisions concerning voting rights and allocation of assessments cannot be amended without the consent of two-thirds (2/3) of each category of affected Residential Parcel Owners.
- Rights reserved to the Founder may not be amended without the specific consent of the Founder.

Any amendment takes effect upon its recordation in the public records of the Clerk's Office.

#### Duration

The covenants and restrictions contained in this Residential Declaration shall run with and bind Residential Parcels and Neighborhood Commons of Clift Farm and shall inure to the benefit of and be enforceable by the Founder. the Neighborhood Association and its Board. and all Owners of the Neighborhood Association. their respective legal representatives, heirs, successors or assigns for 25 years, and shall be automatically extended for each succeeding twenty five-year period unless an instrument signed by Owners representing 80% of the voting rights in the Neighborhood Association shall have been recorded, agreeing to terminate the Residential Declaration as of a specified date.

This Residential Declaration may also be terminated in any of the following ways:

- The Residential Declaration may be terminated at any time after the Period of Founder Control by the consent in writing of two-thirds of all Owners.
- Dedication of Neighborhood Commons. After the Period of Founder Control, the Residential Declaration may be terminated by consent in writing by Owners representing at least two-thirds of the voting rights in the Neighborhood Association, if the Neighborhood Commons have been accepted for dedication or taken by eminent domain by the appropriate unit of local government (except that alleys or footpaths between two Residential Parcels may be divided evenly between the adjacent Residential Parcel Owners in accordance with this Part) or another successor entity organized under the same principles and standards as set forth in this Residential Declaration.



**Definitions** 

Affiliate of the Founder. The "Affiliate of the Founder" means any Person directly or indirectly controlling, controlled by or under common control with the Founder. "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the Residential Parcel Ownership of voting securities, by contract, or otherwise, and the beneficial ownership of shares representing Ten percent (10%) or more of the votes entitled to be cast by a Person's voting shares.

**Articles.** "Articles" are the Articles of Incorporation of the Neighborhood Association.

**Assessments.** "Assessments" is the collective term for the following Neighborhood Association charges, all as further described in Part 5:

- General Assessment. The "General Assessment" is the amount allocated among all Owners to meet the Neighborhood Association's annual budgeted expenses.
- Individual Residential Parcel Assessment.
   An "Individual Residential Parcel Assessment" is a charge made to a particular Residential Parcel Owner for charges relating only to that Residential Parcel.

- Special Assessment. A "Special Assessment" may be charged to each Residential Parcel for capital improvements or emergency expenses.
- Zone Assessment. A "Zone Assessment" is a charge made to a particular Residential Parcel for expenses relating only to Residential Parcels in that Zone.
- <u>Capital Contribution</u>. With certain exceptions as described in Part 5.2, a "Capital Contribution" is paid upon sale to the first Owner, for start-up expenses and working capital for the Neighborhood Association.
- Sub-Area Assessment. A "Sub-Area Assessment" is a charge made to a particular group of Residential Parcels for capital improvements and expenses relating only to Residential Parcels in that Area that is created in advance of sale of the Parcels.

**Board**. "Board" is the Board of Directors of the Neighborhood Association.

**Building.** "Building" shall have the meaning set forth in the building code for County of Madison.

**Bylaws**. The term "bylaws" refers to the bylaws of the Neighborhood Association, as amended from time to time.

Certificate of Completion. The Design Committee issues a "Certificate of Completion" in recordable form upon correction of all deficiencies noted in the Certificate of Substantial Conformance.

Certificate of Substantial Conformance. The Design Committee issues a "Certificate of Substantial Conformance" when the primary building and landscaping are completed in substantial compliance with the approved plans and specifications. The certificate describes any

1

minor areas of deficiency that need to be corrected.

Commercial Property. "Commercial Property" is a Parcel used for office or retail use and does not include a live/work Residential Parcel, the Residential Units of a mixed-use Residential Parcel, or a home office on an otherwise Residential Parcel.

Common Roads. "Common Roads" are the streets and alleys located within the Residential neighborhood that are intended for automobile traffic. Most of the Common Roads are intended to be dedicated to the public. Any Common Roads not dedicated to the public shall be part of the Neighborhood Commons.

Community Operating Agreement. The "Community Operating Agreement" is the Clift Farm Community Operating Agreement, recorded with the Office of the Judge of Probate for Madison County, Alabama, as amended from time to time. The Community Operating Agreement establishes design control, reserves certain rights to the Founder and places other restrictions on the use of Clift Farm.

**Founder.** The "Founder" is Clift Home Place, LLC, and its successors as Founder.

**Guest.** A "Guest" is someone present at Clift Farm by the specific request or invitation of an Owner, Owner's tenant or Occupant.

Improvements. "Improvements" mean any Buildings, underground installations, slope alterations, lights, roads, driveways, utility facilities and lines, parking areas, fences, satellite dishes, rooftop installations, screening walls and barriers, retaining walls, stairs, decks, windbreaks, plantings, planted trees or shrubs, poles, signs, loading areas and any Structures or landscaping improvements of every type and kind.

**Including.** Wherever the term "including" occurs in this Residential Declaration, it shall be interpreted broadly and without limitations as "including but not limited to".

Live/Work Unit. "Live/Work Unit" means a building or spaces within a building used jointly for commercial and residential purposes where work activities are intended to be those that are compatible with residential occupancies. The predominant use of a live/work unit is residential and commercial activity is a secondary use.

Lot. "Lot" means any portion of the Residential Neighborhood now or hereafter designated as a Lot or Residential Parcel of land (other than Neighborhood Commons, dedicated public roads, or other areas dedicated to public use) on a recorded plat of subdivision or re-subdivision of the Residential Neighborhood or on a governmental approved site plan. If no plat is recorded, a Lot is each Residential Parcel of land (other than Neighborhood Commons, dedicated public roads, or other areas dedicated to public use) conveyed as a separate Residential Parcel of real estate, and includes any Improvements now or hereafter constructed on the Lot.

**Member**. Each Owner of a portion of the Residential Property is a "Member" of the Neighborhood Association.

**Mortgagee**. A "Mortgagee" is the holder of a mortgage.

**Neighborhood Association.** "Neighborhood Association" is Clift Farm Neighborhood Association created by this document.

Neighborhood Commons. "Neighborhood Commons" comprises real property within the Residential Neighborhood as designated on a plat or specifically conveyed to the Neighborhood Association, for the common use

and enjoyment of all Owners. "Neighborhood Commons" also include any improvements on that real property, all utilities, utility easements and other easement rights or personal property for the Owner's common use, and any other property of any type specifically designated as Neighborhood Commons. The Neighborhood Commons may include areas dedicated to the public to the extent that the Neighborhood Association agrees to maintain, or is required to maintain, such property.

Occupant. "Occupant" means any Person who occupies a Parcel at Clift Farm because of a relationship to an Owner or tenant and is not themselves an Owner, tenant or Guest or beneficiary of an easement.

Owner. "Owner" is the record owner, whether one or more persons or entities, of fee simple title to any Residential Parcel. Owners shall not include those having such interest merely as security for the performance of an obligation, or condominium associations (but shall include the condominium Owners individually).

Parcel. A "Parcel" means any plot or Residential Parcel of land designated for separate ownership or occupancy in Clift Farm other than a common area, and a unit in a condominium association.

**Period of Founder Control.** The "Period of Founder Control" under the Residential Declaration is that period during which the Founder may appoint the Directors on the Board which is until all the Parcels in Clift Farm have been sold to Owners other than the Founder or its designated entities, or until the Founder voluntarily relinquishes its right to appoint all of the directors.

**Person.** A "Person" is any natural person, corporation, partnership, trust, limited liability company, or other entity.

Residential Declaration. The "Residential Declaration" is this Residential Declaration for Clift Farm, as recorded in the records of the Office of the Judge of Probate for Madison County, Alabama, as amended from time to time.

**Residential Parcel.** "Residential Parcel" is a Parcel of Residential Property.

**Residential Property.** "Residential Property" is all property that is subject to the Residential Declaration, plus additions and less withdrawals made according to the terms of the Residential Declaration.

Residential Unit. A "Residential Unit" is an individual dwelling unit such as a single-family residence, townhouse or other attached dwelling (such as each half of a duplex unit), an apartment or condominium unit, a Live/Work Unit, or a residential dwelling within a mixed-use building.

Rules and Regulations. The "Rules and Regulations" mean any Rules and Regulations adopted from time to time by the Founder or the Neighborhood Association to implement the objectives of this Residential Declaration.

Special Use Residential Parcel. A "Special Use Residential Parcel" is a Residential Parcel of unconventional size, shape, location or use that calls for special design considerations. Typically, a Special Use Residential Parcel will be used for commercial purposes, multi-family residential or community or recreation facilities.

**Structure.** "Structure" shall have the meaning set forth in the building code for Madison County.

**Sub-Area.** "Sub-Area" is an area of the Clift Farm designated before the sale of Parcels for

assessment of capital or operating expenses not assessed to other areas of Clift Farm.

Substantial Capital Improvements. "Substantial Capital Improvements" are those Improvements the costs of which exceed six percent (6%) of the Neighborhood Association's annual budget, or if when added to other capital Improvements for the fiscal year, the sum is more than ten percent (10%) of the Neighborhood Association's annual budget.

**Supplemental Declaration.** "Supplemental Declaration" is any instrument that may be recorded by the Founder or the Neighborhood Association as provided in the Residential Declaration.

**Clift Farm.** "Clift Farm" is the community described in the Community Operating Agreement. It is the aggregation of the Residential Parcels and the Neighborhood Commons, and the Business Parcels and Business Commons.

**Clift Farm Commons.** The "Clift Farm Commons" comprises both the Neighborhood Commons and the Business Commons.

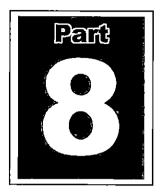
Clift Farm Design Committee. The Clift Farm Design Committee or "Design Committee" is the panel established by the Community Operating Agreement to review and approve modifications to Residential Parcels and Business Parcels and to perform other tasks described in this Residential Declaration, the Business Declaration, and the Community Operating Agreement.

Clift Farm Design Standards. The Clift Farm Design Standards are the design and architectural code for Clift Farm, as amended from time to time and other design guidelines or requirements as developed, approved, and used from time to time.

Wheeled Transport. "Wheeled Transport" means bicycles, scooters, skateboards, roller skates, roller blades, tricycles, wheelchairs, Segway Human Transport, wagons, baby strollers and similar means of transportation, working on wheels or tracks, whether or not motorized, but not including motorcycles, motorized go carts, all-terrain vehicles or minibikes.

**Work/Live Unit.** "Work/Live Unit" means a building or spaces within a building used jointly for commercial and residential purposes where the work activities are intended to be the dominant pursuit of the occupants.

**Zone.** "Zones" are smaller areas within Clift Farm of distinct building type or character. Owners of property within a Zone may be assessed for maintenance of property primarily serving that Zone.



# Miscellaneous Provisions; Signatures

**Authority**. This Residential Declaration shall be administered by the Neighborhood Association or by any managing agent for the Residential Neighborhood designated by the Neighborhood Association.

Effect of Invalidation. If any provision of this Residential Declaration (including any attachment, exhibit, or items incorporated by reference) is held to be invalid or unenforceable by any court, the invalidity of such provision shall not affect the validity of the remaining provisions of this Residential Declaration, which shall continue unimpaired and in full force and effect and shall be construed to the fullest extent practicable as if such invalid or unenforceable provision had not been included in this Residential Declaration.

Interpretation. This Residential Declaration shall be interpreted for the mutual benefit and protection of the Owners of Residential Parcels and in furtherance of the basic goals of this Residential Declaration. Any discrepancy, conflict or ambiguity which may be found herein shall be resolved and determined by the Founder or the Neighborhood Association (to the extent the Founder's rights under this Residential Declaration have been assigned to the Neighborhood Association) and, in the {H0496621.1}

absence of an adjudication by a court of competent jurisdiction to the contrary, such resolution and determination shall be final. This Residential Declaration and rights of the Residential Parcel Owners within Clift Farm shall be governed by the laws of the State of Alabama, without regard to Alabama's choice of law provisions.

**Exhibits and Appendices.** All Exhibits and Appendices attached to this Residential Declaration are incorporated by reference and made a part of this Residential Declaration.

Captions; Capitalized Terms; Graphics. The paragraph headings and captions appearing in this Residential Declaration are inserted only as a matter of convenience and for reference and in no way limit or otherwise affect the scope, meaning or effect of any provisions of this Residential Declaration. Terms that are capitalized in this Residential Declaration shall have the meaning set forth in Part 7 of this Residential Declaration or otherwise in this Residential Declaration unless the context plainly makes such meaning inappropriate. Whenever the singular number is used in this Residential Declaration, the same shall also include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context requires. Graphics or renderings included as a part of this Residential Declaration have no regulatory purpose and do not represent a commitment to a particular outcome or result. The term "and" shall be deemed to mean "and/or".

Community Cooperation. The Residential Parcel Owners shall cooperate to utilize the Neighborhood Commons for the benefit of Clift Farm. The Residential Parcel Owners are encouraged to conduct events and undertakings to build a sense of community as well as to participate with surrounding neighborhoods in creating a "place" for Owners and their neighbors.

**Compliance with Laws**. All Owners shall comply with all applicable federal, state, and local laws including the County of Madison zoning, noise and nuisance ordinances.

Constructive Notice and Acceptance. Each Owner, Occupant or other Person, by acceptance of a deed conveying title to a part of the Residential Neighborhood, or the execution of a contract for the purchase thereof, or the acceptance of a lease or license therefore, or the taking possession thereof, whether from the Founder or other Owner or lessee, shall for itself, his successors and assigns, be deemed to (i) accept such deed, contract, lease, license or possession upon and subject to each and all of the provisions of this Residential Declaration, and (ii) covenant, to and with the Founder, and the other Owners to keep, observe, comply with and perform the requirements of this Residential Declaration, whether or not any reference to this Residential Declaration is contained in the instrument by which such Person acquired his or her interest. Owners agree to refer to this Residential Declaration in deeds, leases and licenses covering any portion of the Residential Neighborhood and to make this Residential Declaration binding upon all Owners and tenants.

Notice to the Founder. Any and all notices or other communication required or permitted by this Residential Declaration, or by law to be served on or given to the Founder must be in writing and shall be deemed appropriately served and given when the notice or communication is personally delivered, or in lieu of such personal service, on the third business day after it is deposited in the United States mail, first class, postage prepaid, certified or registered mail, return receipt requested, addressed to the Founder as follows:

Founder: Clift Home Place, LLC 2101 W. Clinton Avenue, Suite 201 Huntsville, Alabama 35805

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with copies to:

Daniel M. Wilson Maynard, Cooper & Gale, P.C. 655 Gallatin Street Huntsville, AL 35801

or to such other address as the Founder may specify by Supplemental Declaration executed by the Founder without need for the consent of any other Owners.

Notice to Owners. Notice to any Owner (other than the Founder), Tenant or Occupant or to any Mortgagee shall be deemed duly served when personally delivered to the Person to whom it is directed, or in lieu of such personal service, on the third business day after it is deposited in the United States mail, first-class postage prepaid, certified or registered mail, return receipt requested, addressed to (i) the Owner, Tenant or Occupant at the address as shown in the applicable City tax records, or to such other address as designated by the Owner, Tenant or Occupant, in writing to the Founder, as applicable; and (ii) to such Mortgagee at the address designated by the Mortgagee in writing to the Founder.

Waiver. Neither the Founder, nor the Design Committee, nor the Neighborhood Association or its Board nor their successors or assigns shall be liable for damages to any Owner, lessee, licensee, or Occupant by reason of any mistake in judgment, negligence, nonfeasance, action or inaction in the administration of the provisions of this Residential Declaration, the Clift Farm Design Standards or the Rules and Regulations or for the enforcement or failure to enforce this Residential Declaration, the Clift Farm Design Standards or the Rules and Regulations or any part thereof; and every Owner or Occupant, by acquiring an interest in the Residential Neighborhood, agrees that she will not bring any action or suit against the Founder, the Design Committee or its members, the

Neighborhood Association or its Board to recover damages or to seek equitable relief on account of their enforcement or nonenforcement of this Residential Declaration.

**Re-recording**. Unless this Residential Declaration is terminated, the Neighborhood

Association shall rerecord this Residential Declaration or other notice of its terms at intervals necessary under Alabama law to preserve its effect.

SIGNATURE ON NEXT PAGE

{H0496621.1}

Clift Farm Residential Declaration

45

File Number: 201900083282 Page 49 of 64

IN WITNESS WHEREOF, the undersigned do hereby make this Clift Farm Residential Declaration and have caused this Residential Declaration to be executed effective as of the day and year first above written in the presence of me, Notary Public and the undersigned witnesses, after due reading of the whole.

CLIFT HOME PLACE, LLC,

an Alabama limited liability compa

By: BRELAND MANAGE

Its: Manager

Louis W. Breland

Its: Manager

STATE OF ALABAMA

**COUNTY OF MADISON** )

I, the undersigned Notary Public in and for said county and state, hereby certify that Louis W. Breland, as Manager of Breland Management Company, LLC, the Manager of CLIFT HOME PLACE, LLC, an Alabama limited liability company (the "Company"), whose name 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 manager, and with full authority, executed the same voluntarily for and as the act of said Company.

Given under my hand and official seal this the 15th day of November, 2019.

Notary/Public

Printed Name:

My Commission Expires:

Mnr

ÉNT COMPANY, LLC

My Commission Expires

March 26, 2023

[Notarial Seal]

{H0496621.1}

Clift Farm Residential Declaration

46

Instrument #: 2019-00083282 Seq: 50

File Number: 201900083282

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The undersigned, as the owner of a portion of the property subject to this declaration, hereby joins in this Residential Declaration for the purpose of evidencing its consent therety

BRELAND HOMES, LLC, a Delawate tighted liability company

Louis W. Breland, its Manager

STATE OF ALABAMA

COUNTY OF MADISON

I, the undersigned Notary Public in and for said county and state, hereby certify that Louis W. Breland, in his capacity as the Manager of Breland Homes, LLC, a Delaware limited liability company (the "Company"), whose name 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 Manager, and with full authority, executed the same voluntarily for and as the act of the Company.

Given under my hand and official seal this the 15th day of November, 2019.

[Notarial Seal]

NOTARY PUBLIC OF

)

)

Notary Public

Printed Name:\_\_

My Commission Expires:

My Commission Expires March 26, 2023

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Clift Farm Residential Declaration

#### **IOINDER OF MORTGAGEES**

The undersigned, as the mortgagees of a portion of the property subject to this declaration, hereby joins in this Residential Declaration for the purpose of evidencing their consent thereto.

THE LILLIAN AND JACK T. CLIFT CHARITABLE REMAINDER UNITRUST, DATED OCTOBER 27, 2017

Kathleen Clift Steigelman, Its Trustee

THE JACK T. CLIFT, JR. INTER VIVOS TRUST, DATED MARCH 31, 1988

By: Kathleen Clift Steigelman, Its Trustee

[notary acknowledgements on following page]

{H0496621.1}

Clift Farm Residential Declaration

48

Instrument #: 2019-00083282 Seq: 52

File Number: 201900083282 Page 52 of 64

#### **COUNTY OF MADISON** )

I, the undersigned Notary Public in and for said county and state, hereby certify that Kathleen Clift Steigelman, in her capacity as the sole Trustee of THE LILLIAN AND JACK T. CLIFT CHARITABLE REMAINDER UNITRUST, DATED OCTOBER 27, 2017 (the "Trust"), whose name 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, she, as such Trustee, and with full authority, executed the same voluntarily for and as the act of Trustee.

Given under my hand and official seal this the 18 day of December, 2019.

)

)



Printed Name: Sharon H. Conner My Commission Expires: 5/22/202

**COUNTY OF MADISON** 

I, the undersigned Notary Public in and for said County in said State, do hereby certify that Kathleen Clift Steigelman, whose name as Trustee of THE JACK T. CLIFT, JR. INTER VIVOS TRUST, DATED MARCH 31, 1988, is signed to the foregoing instrument, and who is known to me, and known to be such Trustee, acknowledged before me on this day that being informed of the contents of said instrument, she, as such Trustee and with full authority, executed the same voluntarily for and as the act of Trustee.

Given under my hand and official seal this the  $\frac{18}{2}$  day of December, 2019.



My Commission Expires: ちしゅん

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Clift Farm Residential Declaration



# **Early Years**

This appendix contains information about how the community is to operate in the earlier years. It gives a timetable for various transitions from complete Founder control to independence. When the transition is complete, this appendix is no longer necessary and may be disregarded or removed.

### The Neighborhood Commons

At the time that the first Residential Parcels are conveyed to Owners, the Founder will still be developing portions of community, and this development will likely continue for a period of vears. The Founder has reserved in the Residential Declaration and the Community Operating Agreement various easements and rights that it needs to be able to complete development of the community. The Founder may convey to the Neighborhood Association additional Neighborhood Commons as they are completed. The Neighborhood Association is required accept these additional Neighborhood Commons for maintenance, as long as any Improvements on the Neighborhood Commons are in reasonable repair, normal wear and tear excepted, at the time of conveyance to the Neighborhood Association.

#### **Architectural Control**

To allow the Founder to complete development in accordance with the Founder's vision for the community, the Founder shall have the right to approve all initial Improvements. No changes can be made in the Clift Farm Design Standards without the Founder's consent until completion of initial Improvements for all Residential Parcels.

#### **Finance**

Founder's Assessments: Founder's Guarantee. The Founder or its designated entities shall be excused from payment of General Assessments during the Guarantee Period as defined below. The Founder guarantees to Owners that their General Assessments during the Guarantee Period shall not exceed the initial General Assessment (subject to the increases set forth below). The Founder agrees to pay any Neighborhood Association expenses incurred during the Guarantee Period and normally paid through General Assessments that exceed the amount produced by the General Assessments during that time. The Guarantee Period shall begin upon the recordation with the Office of the Judge of Probate for Madison County, Alabama, of the first deed of conveyance of a Residential Parcel in the Residential Neighborhood and shall end at the conclusion of the third subsequent full fiscal year (so that three full fiscal years are guaranteed). The Guarantee Period shall then be automatically extended for successive six-month periods up to an additional three years unless terminated upon written notice by the Founder to the Neighborhood Association at least thirty days before the end of then-current Guarantee During the Guarantee Period, the Period. General Assessments may be increased by up to fifteen percent per year.

{H0496621.1}

Clift Farm Residential Declaration

50

Instrument #: 2019-00083282 Seq: 54

Owner's Assessments. Each Owner begins paying annual General Assessments from the time the Residential Parcel is conveyed, prorated to the month of closing. The Owner may be required to pay the remainder of that year's General Assessments in advance. If there is a Special Assessment in effect for that Residential Parcel, it will also be prorated to the month of closing.

The Founder may assign all or any portion of its rights or obligations under the Residential Declaration at any time to a successor or assign, or to the Institute if one is created, or the Neighborhood Association.

#### Additional Information

Neither the Neighborhood Association nor the Founder makes any representation or assumes any liability for any loss or injury.

## Assignment of Developer Rights

# Quick View: Roles of the Founder and the Neighborhood Association

The Founder	The Neighborhood Association		
Constructs the initial improvements on the	Maintains the improvements to the		
Neighborhood Commons.	Neighborhood Commons and makes		
	capital improvements or replaces		
	improvements as it determines is		
The second secon	appropriate.		
Installs the initial landscaping on the Neighborhood	Maintains the landscaping of the		
Commons.	Neighborhood Commons at the level of		
	care it determines is appropriate.		
Maintains an office and staff as necessary to conduct its	Maintains an office and staff as		
sales operations and to fulfill its Founder duties. May	necessary to manage the Neighborhood		
hire a Manager to fulfill its duties.	Association's affairs. May hire a		
	Manager to fulfill its duties.		
Prepares the initial estimated budget for the	Adopts the initial budget and		
Neighborhood Association.	subsequent budgets.		
Collects the Capital Contribution at closing and delivers it	Collects assessments based on budget.		
to the Neighborhood Association.			

{H0496621.1}

Clift Farm Residential Declaration

#### EXHIBIT A

#### Clift Farm

The following real property located in Madison County, Alabama:

ALL THAT PART OF SECTIONS 20 AND 29, TOWNSHIP 3 SOUTH, RANGE 2 WEST OF THE HUNTSVILLE MERIDIAN, MADISON COUNTY, ALABAMA, BEING MORE PARTICULARLY DESCRIBED AS COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 29; THENCE SOUTH 01 DEGREES 23 MINUTES 55 SECONDS WEST, 60.19 FEET TO A POINT; THENCE NORTH 89 DEGREES 45 MINUTES 47 SECONDS WEST, 41.03 FEET TO A 1/2 INCH REBAR FOUND ON THE WEST RIGHT-OF-WAY OF WALL TRIANA HIGHWAY, THE POINT OF BEGINNING OF THE TRACT HEREIN DESCRIBED:

THENCE FROM THE POINT OF BEGINNING AND LEAVING THE SAID WEST RIGHT-OF-WAY. NORTH 88 DEGREES 45 MINUTES 47 SECONDS WEST, 570.99 FEET TO A CAPPED IRON PIN FOUND;

THENCE SOUTH 01 DEGREES 33 MINUTES 45 SECONDS WEST, 776.57 FEET TO A CONCRETE MONUMENT FOUND:

THENCE SOUTH 01 DEGREES 36 MINUTES 16 SECONDS WEST, 479.59 FEET TO A CONCRETE MONUMENT FOUND:

THENCE SOUTH 01 DEGREES 34 MINUTES 12 SECONDS WEST. 847.45 FEET TO A 5/8 INCH CAPPED REBAR FOUND ON THE NORTH RIGHT-OF-WAY OF U.S. HIGHWAY 72;

THENCE ALONG THE SAID NORTH RIGHT-OF-WAY, SOUTH 77 DEGREES 29 MINUTES 22 SECONDS WEST, 4746.35 FEET TO A POINT ON THE EAST RIGHT-OF-WAY OF BALCH ROAD: THENCE ALONG THE SAID EAST RIGHT-OF WAY, NORTH 23 DEGREES 43 MINUTES 26 SECONDS WEST, 99.73 FEET TO A POINT;

THENCE CONTINUE ALONG THE SAID EAST RIGHT-OF-WAY, NORTH 00 DEGREES 13 MINUTES 31 SECONDS EAST, 300.48 FEET TO A POINT;

THENCE CONTINUE ALONG THE SAID EAST RIGHT-OF-WAY, NORTH 01 DEGREES 31 MINUTES 05 SECONDS EAST, 409.24 FEET TO A POINT;

THENCE CONTINUE ALONG THE SAID EAST RIGHT-OF-WAY, NORTH 88 DEGREES 28 MINUTES 55 SECONDS WEST, 14.05 FEET TO A POINT;

THENCE CONTINUE ALONG THE SAID EAST RIGHT-OF-WAY. NORTH 01 DEGREES 30 MINUTES 05 SECONDS EAST, 2601.93 FEET TO A POINT;

THENCE LEAVING THE SAID EAST RIGHT-OF-WAY SOUTH 88 DEGREES 30 MINUTES 02 SECONDS EAST, 92.21 FEET TO A POINT;

THENCE NORTH 46 DEGREES 29 MINUTES 58 SECONDS EAST, 54.85 FEET TO A POINT;

THENCE NORTH 01 DEGREES 29 MINUTES 58 SECONDS EAST, 91.21 FEET TO A POINT;

THENCE SOUTH 88 DEGREES 30 MINUTES 02 SECONDS EAST, 175.50 FEET TO A POINT ON THE FEMA FLOODWAY BOUNDARY OF KNOX CREEK;

THENCE ALONG THE SAID FEMA FLOODWAY BOUNDARY OF KNOX CREEK AS IT MEANDERS THE FOLLOWING BEARINGS AND DISTANCES:

NORTH 35 DEGREES 42 MINUTES 19 SECONDS EAST, 140.74FEET;

NORTH 46 DEGREES 32 MINUTES 52 SECONDS EAST, 61.76 FEET;

NORTH 35 DEGREES 40 MINUTES 35 SECONDS EAST, 198.26 FEET;

NORTH 27 DEGREES 08 MINUTES 04 SECONDS EAST, 81.17 FEET;

NORTH 48 DEGREES 02 MINUTES 11 SECONDS EAST, 246.81 FEET;

{H0496621.1}

Clift Farm Residential Declaration

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NORTH 69 DEGREES 45 MINUTES 37 SECONDS EAST, 96.80 FEET;
      NORTH 60 DEGREES 20 MINUTES 59 SECONDS EAST, 184.93 FEET;
      NORTH 47 DEGREES 11 MINUTES 13 SECONDS EAST, 91.86 FEET;
      NORTH 31 DEGREES 57 MINUTES 23 SECONDS EAST, 85.79 FEET;
      NORTH 47 DEGREES 58 MINUTES 38 SECONDS EAST, 45.13 FEET;
      NORTH 32 DEGREES 12 MINUTES 05 SECONDS EAST, 66.58 FEET;
      NORTH 05 DEGREES 44 MINUTES 28 SECONDS EAST, 100.58 FEET;
      NORTH 15 DEGREES 18 MINUTES 00 SECONDS EAST, 75.21 FEET TO A POINT ON THE
SOUTH BOUNDARY OF CROSS CREEK PHASE 2 AS SHOWN BY THE MAP OR PLAT OF SAID
SUBDIVISION RECORDED IN THE OFFICE OF THE JUDGE OF PROBATE OF MADISON COUNTY,
ALABAMA IN DOCUMENT NUMBER 20110202000066960;
THENCE SOUTH 89 DEGREES 23 MINUTES 05 SECONDS EAST AND ALONG THE SAID SOUTH
BOUNDARY, 41.82 FEET TO A POINT IN KNOX CREEK;
THENCE ALONG THE SAID KNOX CREEK AS IT MEANDERS THE FOLLOWING BEARINGS AND
DISTANCES:
      NORTH 58 DEGREES 31 MINUTES 50 SECONDS EAST, 110.76 FEET;
      NORTH 80 DEGREES 32 MINUTES 16 SECONDS EAST, 23.51 FEET:
      SOUTH 34 DEGREES 59 MINUTES 31 SECONDS EAST, 23.59 FEET;
      SOUTH 05 DEGREES 32 MINUTES 43 SECONDS WEST, 66.66 FEET;
      NORTH 87 DEGREES 58 MINUTES 43 SECONDS EAST, 54.78 FEET;
      NORTH 47 DEGREES 23 MINUTES 09 SECONDS EAST, 21.88 FEET;
      NORTH 09 DEGREES 34 MINUTES 27 SECONDS EAST, 54.22 FEET;
      NORTH 19 DEGREES 55 MINUTES 32 SECONDS EAST, 54.81 FEET;
      NORTH 50 DEGREES 57 MINUTES 52 SECONDS EAST, 30.68 FEET;
      NORTH 83 DEGREES 39 MINUTES 35 SECONDS EAST, 23.33 FEET;
      SOUTH 76 DEGREES 54 MINUTES 29 SECONDS EAST, 28.44 FEET;
      SOUTH 59 DEGREES 32 MINUTES 04 SECONDS EAST, 38.11 FEET;
      SOUTH 63 DEGREES 26 MINUTES 06 SECONDS EAST, 11.52 FEET;
      SOUTH 88 DEGREES 12 MINUTES 36 SECONDS EAST, 20.62 FEET;
      NORTH 53 DEGREES 50 MINUTES 31 SECONDS EAST, 20.74 FEET:
      NORTH 31 DEGREES 03 MINUTES 15 SECONDS EAST, 69.92 FEET;
      NORTH 06 DEGREES 34 MINUTES 55 SECONDS WEST, 33.72 FEET;
      NORTH 13 DEGREES 17 MINUTES 55 SECONDS WEST, 36.40 FEET;
      NORTH 10 DEGREES 53 MINUTES 08 SECONDS EAST, 34.11 FEET;
      NORTH 29 DEGREES 56 MINUTES 18 SECONDS EAST, 141.97 FEET;
      NORTH 34 DEGREES 19 MINUTES 49 SECONDS WEST, 31.98 FEET;
      NORTH 03 DEGREES 10 MINUTES 47 SECONDS EAST, 23.22 FEET;
      NORTH 04 DEGREES 23 MINUTES 55 SECONDS EAST, 33.59 FEET;
      NORTH 12 DEGREES 12 MINUTES 02 SECONDS WEST, 24.38 FEET;
      NORTH 16 DEGREES 44 MINUTES 31 SECONDS WEST, 82.73 FEET;
      NORTH 11 DEGREES 02 MINUTES 27 SECONDS WEST, 26.91 FEET;
      NORTH 13 DEGREES 42 MINUTES 25 SECONDS EAST, 27.18 FEET;
      NORTH 65 DEGREES 01 MINUTES 34 SECONDS EAST, 51.56 FEET;
      SOUTH 59 DEGREES 50 MINUTES 13 SECONDS EAST, 23.30 FEET;
      SOUTH 77 DEGREES 14 MINUTES 33 SECONDS EAST, 35.00 FEET;
      NORTH 75 DEGREES 57 MINUTES 50 SECONDS EAST, 31.87 FEET;
      NORTH 56 DEGREES 33 MINUTES 36 SECONDS EAST, 40.91 FEET;
      NORTH 46 DEGREES 56 MINUTES 06 SECONDS EAST, 134.89 FEET;
      NORTH 59 DEGREES 14 MINUTES 14 SECONDS EAST, 31.48 FEET;
      NORTH 70 DEGREES 58 MINUTES 28 SECONDS EAST, 59.28 FEET;
      NORTH 56 DEGREES 18 MINUTES 36 SECONDS EAST, 23.22 FEET;
{H0496621.1}
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                         Clift Farm Residential Declaration
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NORTH 38 DEGREES 53 MINUTES 04 SECONDS EAST, 76.95 FEET;
NORTH 67 DEGREES 13 MINUTES 47 SECONDS WEST, 56.58 FEET;
NORTH 12 DEGREES 25 MINUTES 33 SECONDS WEST, 38.91 FEET;
NORTH 09 DEGREES 27 MINUTES 44 SECONDS EAST, 62.69 FEET;
NORTH 24 DEGREES 21 MINUTES 45 SECONDS EAST, 37.48 FEET;
NORTH 32 DEGREES 59 MINUTES 19 SECONDS EAST, 43.77 FEET;
NORTH 47 DEGREES 32 MINUTES 41 SECONDS EAST, 41.03 FEET;
NORTH 61 DEGREES 43 MINUTES 30 SECONDS EAST, 96.54 FEET;
NORTH 77 DEGREES 09 MINUTES 34 SECONDS EAST, 48.41 FEET;
NORTH 87 DEGREES 17 MINUTES 58 SECONDS EAST, 64.77 FEET;
NORTH 71 DEGREES 59 MINUTES 45 SECONDS EAST, 51.34 FEET:
NORTH 60 DEGREES 36 MINUTES 40 SECONDS EAST, 60.94 FEET;
NORTH 49 DEGREES 34 MINUTES 26 SECONDS EAST, 129.89 FEET;
NORTH 81 DEGREES 52 MINUTES 12 SECONDS EAST, 12.95 FEET;
NORTH 88 DEGREES 02 MINUTES 31 SECONDS EAST, 71.45 FEET;
NORTH 68 DEGREES 44 MINUTES 58 SECONDS EAST, 23.58 FEET AND
NORTH 52 DEGREES 26 MINUTES 29 SECONDS EAST, 32.22 FEET TO A POINT;
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THENCE LEAVING THE SAID KNOX CREEK, SOUTH 89 DEGREES 07 MINUTES 10 SECONDS EAST, 2625.51 FEET TO A CONCRETE MONUMENT FOUND ON THE WEST RIGHT-OF-WAY OF WALL TRIANA HIGHWAY;

THENCE ALONG THE SAID WEST RIGHT-OF-WAY, SOUTH 01 DEGREES 25 MINUTES 15 SECONDS WEST, 2681.28 FEET TO A CONCRETE MONUMENT FOUND (DAMAGED); THENCE CONTINUE ALONG THE SAID WEST RIGHT-OF-WAY, SOUTH 01 DEGREES 39 MINUTES 56 SECONDS WEST, 59.90 FEET TO THE POINT OF BEGINNING AND CONTAINING 537.32 ACRES, MORE OR LESS.

#### LESS AND EXCEPT:

A 0.66 ACRE TRACT OF LAND CONVEYED TO JOHN T. CLIFT BY LIFE ESTATE DEED RECORDED IN THE OFFICE OF THE JUDGE OF PROBATE OF MADISON COUNTY, ALABAMA, IN DOCUMENT NUMBER 20150814000451640

#### ALSO LESS AND EXCEPT:

A 3.00 ACRE TRACT OF LAND CONVEYED TO JACK T. CLIFT BY LIFE ESTATE DEED RECORDED IN THE OFFICE OF THE JUDGE OF PROBATE OF MADISON COUNTY, ALABAMA, IN DOCUMENT NUMBER 20150814000451650 BEING

THE NET ACREAGE OF THE ABOVE DESCRIBED BEING 533.66 ACRES, MORE OR LESS.

#### **ALSO INCLUDING**

ALL THAT PART OF SECTION 30, TOWNSHIP 3 SOUTH, RANGE 2 WEST OF THE HUNTSVILLE MERIDIAN, MADISON COUNTY, ALABAMA, BEING MORE PARTICULARLY DESCRIBED AS COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 30, THENCE NORTH 00 DEGREES 27 MINUTES 10 SECONDS EAST, 2513.37 FEET TO A POINT; THENCE NORTH 88 DEGREES 16 MINUTES 59 SECONDS WEST, 31.20 FEET TO A POINT ON THE WEST RIGHT-OF-WAY OF BALCH ROAD, THE POINT OF BEGINNING OF THE TRACT HEREIN DESCRIBED;

{H0496621.1}

Clift Farm Residential Declaration

54

Instrument #: 2019-00083282 Seq: 58

Page 58 of 64

THENCE FROM THE POINT OF BEGINNING NORTH 88 DEGREES 25 MINUTES 20 SECONDS WEST, 1184.58 FEET TO A POINT;

THENCE NORTH 03 DEGREES 32 MINUTES 36 SECONDS EAST, 144.49 FEET TO A CAPPED IRON PIN FOUND:

THENCE NORTH 87 DEGREES 09 MINUTES 13 SECONDS WEST, 128.78 FEET TO A 1 INCH OPEN PIPE;

THENCE NORTH 01 DEGREES 05 MINUTES 51 SECONDS EAST, 756.98 FEET TO A POINT;

THENCE SOUTH 88 DEGREES 54 MINUTES 09 SECONDS EAST, 160.00 FEET TO A POINT;

THENCE SOUTH 01 DEGREES 05 MINUTES 51 SECONDS WEST, 192.55 FEET TO A POINT;

THENCE SOUTH 88 DEGREES 54 MINUTES 09 SECONDS EAST, 1161.38 FEET TO A POINT ON THE WEST RIGHT-OF-WAY OF BALCH ROAD;

THENCE ALONG THE SAID WEST RIGHT-OF-WAY, SOUTH 01 DEGREES 30 MINUTES 05 SECONDS WEST, 661.53 FEET TO A POINT;

THENCE CONTINUE ALONG THE SAID WEST RIGHT-OF-WAY, SOUTH 10 DEGREES 02 MINUTES 56 SECONDS WEST, 61.89 FEET TO THE POINT OF BEGINNING AND CONTAINING 21.25 ACRES, MORE OR LESS.

LESS AND EXCEPT A 2.0 ACRE TRACT FOR PIKE CEMETERY.

Page 59 of 64

{H0496621.1}

Clift Farm Residential Declaration

#### **EXHIBIT B**

#### Residential Neighborhood

STATE OF ALABAMA COUNTY OF MADISON

ALL THAT PART OF SECTIONS 20 AND 29, TOWNSHIP 3 SOUTH, RANGE 2 WEST OF THE HUNTSVILLE MERIDIAN, MADISON COUNTY, ALABAMA, BEING MORE PARTICULARLY DESCRIBED AS COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 29; THENCE SOUTH 01 DEGREES 23 MINUTES 55 SECONDS WEST, 60.19 FEET TO A POINT; THENCE NORTH 89 DEGREES 45 MINUTES 47 SECONDS WEST, 41.03 FEET TO A 1/2 INCH REBAR FOUND ON THE WEST RIGHT-OF-WAY OF WALL TRIANA HIGHWAY, THE POINT OF BEGINNING OF THE TRACT HEREIN DESCRIBED;

THENCE FROM THE POINT OF BEGINNING AND LEAVING THE SAID WEST RIGHT-OF-WAY, NORTH 88 DEGREES 45 MINUTES 47 SECONDS WEST, 570.99 FEET TO A CAPPED IRON PIN FOUND; THENCE SOUTH 01 DEGREES 33 MINUTES 45 SECONDS WEST, 776.57 FEET TO A CONCRETE MONUMENT FOUND;

THENCE SOUTH 01 DEGREES 36 MINUTES 16 SECONDS WEST, 479.59 FEET TO A CONCRETE MONUMENT FOUND:

THENCE SOUTH 01 DEGREES 34 MINUTES 12 SECONDS WEST, 847.45 FEET TO A 5/8 INCH CAPPED REBAR FOUND ON THE NORTH RIGHT-OF-WAY OF U.S. HIGHWAY 72;

THENCE ALONG THE SAID NORTH RIGHT-OF-WAY, SOUTH 77 DEGREES 29 MINUTES 22 SECONDS WEST, 1079.00 FEET TO A POINT;

THENCE LEAVING THE SAID NORTH RIGHT-OF-WAY AND ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 64.50 FEET, A CHORD BEARING AND DISTANCE OF NORTH 11 DEGREES 58 MINUTES 07 SECONDS EAST, 51.14 FEET TO A POINT;

THENCE NORTH 11 DEGREES 23 MINUTES 19 SECONDS WEST, 244.51 FEET TO A POINT;

THENCE NORTH 11 DEGREES 06 MINUTES 45 SECONDS WEST, 103.77 FEET TO A POINT:

THENCE ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 260.50 FEET, A CHORD BEARING AND

DISTANCE OF NORTH 22 DEGREES 46 MINUTES 44 SECONDS WEST, 102.89 FEET TO A POINT:

THENCE NORTH 26 DEGREES 04 MINUTES 29 SECONDS EAST, 88.08 FEET TO A POINT:

THENCE NORTH 32 DEGREES 21 MINUTES 07 SECONDS WEST, 534.31 FEET TO A POINT;

THENCE ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 470.00 FEET, A CHORD BEARING AND

DISTANCE OF NORTH 35 DEGREES 35 MINUTES 37 SECONDS WEST, 53.15 FEET TO A POINT;

THENCE NORTH 38 DEGREES 50 MINUTES 06 SECONDS WEST, 153.08 FEET TO A POINT;

THENCE SOUTH 51 DEGREES 09 MINUTES 43 SECONDS WEST, 103.12 FEET TO A POINT OF CURVATURE;

THENCE ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 225.00 FEET, A CHORD BEARING AND
DISTANCE OF SOUTH 53 DEGREES OF MINISTER OF SECONDS WEST 15 OR FEET TO A POINT OF REVERSE

DISTANCE OF SOUTH 53 DEGREES 05 MINUTES 06 SECONDS WEST, 15.08 FEET TO A POINT OF REVERSE CURVE;

THENCE ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 25.00 FEET, A CHORD BEARING AND DISTANCE OF SOUTH 21 DEGREES 07 MINUTES 53 SECONDS WEST, 27.87 FEET TO A POINT; THENCE SOUTH 77 DEGREES 11 MINUTES 27 SECONDS WEST, 74.82 FEET TO A POINT; {H0496621.1}

Clift Farm Residential Declaration

56

Instrument #: 2019-00083282 Seq: 60

File Number: 201900083282 F

Page 60 of 64

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THENCE SOUTH 77 DEGREES 40 MINUTES 33 SECONDS WEST, 976.46 FEET TO A POINT OF CURVATURE:
THENCE ALONG A CURVE TO THE LEFT, HAVING A RADIU SOF 25.00 FEET, A CHORD BEARING AND
DISTANC EOF SOUTH 32 DEGREES 34 MINUTES 58 SECONDS WEST, 35.41 FEET TO A POINT;
THENCE SOUTH 12 DEGREES 30 MINUTES 38 SECONDS EAST, 133.42 FEET TO A POINT;
THENCE SOUTH 77 DEGREES 40 MINUTES 33 SECONDS EAST, 516.81 FEET TO A POINT;
THENCE SOUTH 77 DEGREES 29 MINUTES 21 SECONDS WEST, 279.92 FEET TO A POINT:
THENCE SOUTH 12 DEGREES 30 MINUTES 39 SECONDS EAST, 446.91 FEET TO A POINT OF CURVATURE;
THENCE ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 145.00 FEET, A CHORD BEARING AND
DISTANCE OF SOUTH 32 DEGREES 18 MINTUES 34 SECONDS EAST, 98.23 FEET TO A POINT;
THENCE SOUTH 52 DEGREES 06 MINUTES 29 SECONDS EAST, 94.57 FEET TO A POINT;
THENCE SOUTH 57 DEGREES 55 MINUTES 33 SECONDS EAST, 73.25 FEET TO A POINT;
THENCE SOUTH 55 DEGREES 32 MINUTES 16 SECONDS EAST, 83.55 FEET TO A POINT;
THENCE SOUTH 77 DEGREES 29 MINUTES 22 SECONDS WEST, 379.31 FEET TO A POINT;
THENCE SOUTH 12 DEGREES 30 MINUTES 38 SECONDS EAST, 316,50 FEET TO A POINT ON THE NORTH
RIGHT-OF-WAY OF SAID U.S. HIGHWAY 72;
THENCE ALONG THE SAID NORTH RIGHT-OF-WAY, SOUTH 77 DEGREES 29 MINUTES 22 SECONDS WEST.
1215.53 FEET TO THE EAST RIGHT-OF-WAY OF BALCH ROAD;
THENCE ALONG THE SAID EAST RIGHT-OF WAY, NORTH 23 DEGREES 43 MINUTES 26 SECONDS WEST,
99.73 FEET TO A POINT;
THENCE CONTINUE ALONG THE SAID EAST RIGHT-OF-WAY, NORTH 00 DEGREES 13 MINUTES 31 SECONDS
EAST, 300.48 FEET TO A POINT:
THENCE CONTINUE ALONG THE SAID EAST RIGHT-OF-WAY, NORTH 01 DEGREES 31 MINUTES 05 SECONDS
EAST, 409.24 FEET TO A POINT;
THENCE CONTINUE ALONG THE SAID EAST RIGHT-OF-WAY, NORTH 88 DEGREES 28 MINUTES 55 SECONDS
WEST, 14.05 FEET TO A POINT;
THENCE CONTINUE ALONG THE SAID EAST RIGHT-OF-WAY, NORTH 01 DEGREES 30 MINUTES 05 SECONDS
EAST, 2601.93 FEET TO A POINT;
THENCE LEAVING THE SAID EAST RIGHT-OF-WAY SOUTH 88 DEGREES 30 MINUTES 02 SECONDS EAST,
92.21 FEET TO A POINT;
THENCE NORTH 46 DEGREES 29 MINUTES 58 SECONDS EAST, 54.85 FEET TO A POINT;
THENCE NORTH 01 DEGREES 29 MINUTES 58 SECONDS EAST, 91.21 FEET TO A POINT;
THENCE SOUTH 88 DEGREES 30 MINUTES 02 SECONDS EAST, 175.50 FEET TO A POINT ON THE FEMA
FLOODWAY BOUNDARY OF KNOX CREEK:
THENCE ALONG THE SAID FEMA FLOODWAY BOUNDARY OF KNOX CREEK AS IT MEANDERS THE
FOLLOWING BEARINGS AND DISTANCES:
       NORTH 35 DEGREES 42 MINUTES 19 SECONDS EAST, 140.74FEET;
       NORTH 46 DEGREES 32 MINUTES 52 SECONDS EAST, 61.76 FEET;
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{H0496621.1}

Clift Farm Residential Declaration

NORTH 35 DEGREES 40 MINUTES 35 SECONDS EAST, 198.26 FEET; NORTH 27 DEGREES 08 MINUTES 04 SECONDS EAST, 81.17 FEET; NORTH 48 DEGREES 02 MINUTES 11 SECONDS EAST, 246.81 FEET; NORTH 69 DEGREES 45 MINUTES 37 SECONDS EAST, 96.80 FEET; NORTH 60 DEGREES 20 MINUTES 59 SECONDS EAST, 184.93 FEET; NORTH 47 DEGREES 11 MINUTES 13 SECONDS EAST, 91.86 FEET;

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NORTH 05 DEGREES 44 MINUTES 28 SECONDS EAST, 100.58 FEET;
      NORTH 15 DEGREES 18 MINUTES 00 SECONDS EAST, 75.21 FEET TO A POINT ON THE SOUTH
BOUNDARY OF CROSS CREEK PHASE 2 AS SHOWN BY THE MAP OR PLAT OF SAID SUBDIVISION
RECORDED IN THE OFFICE OF THE JUDGE OF PROBATE OF MADISON COUNTY, ALABAMA IN DOCUMENT
NUMBER 20110202000066960:
THENCE SOUTH 89 DEGREES 23 MINUTES 05 SECONDS EAST AND ALONG THE SAID SOUTH BOUNDARY,
41.82 FEET TO A POINT IN KNOX CREEK;
THENCE ALONG THE SAID KNOX CREEK AS IT MEANDERS THE FOLLOWING BEARINGS AND DISTANCES:
       NORTH 58 DEGREES 31 MINUTES 50 SECONDS EAST, 110.76 FEET;
      NORTH 80 DEGREES 32 MINUTES 16 SECONDS EAST, 23.51 FEET;
      SOUTH 34 DEGREES 59 MINUTES 31 SECONDS EAST, 23.59 FEET;
       SOUTH 05 DEGREES 32 MINUTES 43 SECONDS WEST, 66.66 FEET;
       NORTH 87 DEGREES 58 MINUTES 43 SECONDS EAST, 54.78 FEET;
       NORTH 47 DEGREES 23 MINUTES 09 SECONDS EAST, 21.88 FEET;
       NORTH 09 DEGREES 34 MINUTES 27 SECONDS EAST, 54.22 FEET;
       NORTH 19 DEGREES 55 MINUTES 32 SECONDS EAST, 54.81 FEET;
       NORTH 50 DEGREES 57 MINUTES 52 SECONDS EAST, 30.68 FEET;
       NORTH 83 DEGREES 39 MINUTES 35 SECONDS EAST, 23.33 FEET;
       SOUTH 76 DEGREES 54 MINUTES 29 SECONDS EAST, 28.44 FEET;
       SOUTH 59 DEGREES 32 MINUTES 04 SECONDS EAST, 38.11 FEET;
       SOUTH 63 DEGREES 26 MINUTES 06 SECONDS EAST, 11.52 FEET;
       SOUTH 88 DEGREES 12 MINUTES 36 SECONDS EAST, 20.62 FEET;
       NORTH 53 DEGREES 50 MINUTES 31 SECONDS EAST, 20.74 FEET;
       NORTH 31 DEGREES 03 MINUTES 15 SECONDS EAST, 69.92 FEET;
       NORTH 06 DEGREES 34 MINUTES 55 SECONDS WEST, 33.72 FEET;
       NORTH 13 DEGREES 17 MINUTES 55 SECONDS WEST, 36.40 FEET;
       NORTH 10 DEGREES 53 MINUTES 08 SECONDS EAST, 34.11 FEET;
       NORTH 29 DEGREES 56 MINUTES 18 SECONDS EAST, 141.97 FEET;
       NORTH 34 DEGREES 19 MINUTES 49 SECONDS WEST, 31.98 FEET;
       NORTH 03 DEGREES 10 MINUTES 47 SECONDS EAST, 23.22 FEET;
       NORTH 04 DEGREES 23 MINUTES 55 SECONDS EAST, 33.59 FEET;
       NORTH 12 DEGREES 12 MINUTES 02 SECONDS WEST, 24.38 FEET;
       NORTH 16 DEGREES 44 MINUTES 31 SECONDS WEST, 82.73 FEET;
       NORTH 11 DEGREES 02 MINUTES 27 SECONDS WEST, 26.91 FEET;
       NORTH 13 DEGREES 42 MINUTES 25 SECONDS EAST, 27.18 FEET;
       NORTH 65 DEGREES 01 MINUTES 34 SECONDS EAST, 51.56 FEET;
       SOUTH 59 DEGREES 50 MINUTES 13 SECONDS EAST, 23.30 FEET;
       SOUTH 77 DEGREES 14 MINUTES 33 SECONDS EAST, 35.00 FEET;
       NORTH 75 DEGREES 57 MINUTES 50 SECONDS EAST, 31.87 FEET;
       NORTH 56 DEGREES 33 MINUTES 36 SECONDS EAST, 40.91 FEET;
{H0496621.1}
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Clift Farm Residential Declaration

NORTH 31 DEGREES 57 MINUTES 23 SECONDS EAST, 85.79 FEET; NORTH 47 DEGREES 58 MINUTES 38 SECONDS EAST, 45.13 FEET; NORTH 32 DEGREES 12 MINUTES 05 SECONDS EAST, 66.58 FEET;

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NORTH 46 DEGREES 56 MINUTES 06 SECONDS EAST, 134.89 FEET;
NORTH 59 DEGREES 14 MINUTES 14 SECONDS EAST, 31.48 FEET;
NORTH 70 DEGREES 58 MINUTES 28 SECONDS EAST, 59.28 FEET;
NORTH 56 DEGREES 18 MINUTES 36 SECONDS EAST, 23.22 FEET;
NORTH 38 DEGREES 53 MINUTES 04 SECONDS EAST, 76.95 FEET;
NORTH 67 DEGREES 13 MINUTES 47 SECONDS WEST, 56.58 FEET;
NORTH 12 DEGREES 25 MINUTES 33 SECONDS WEST, 38.91 FEET;
NORTH 09 DEGREES 27 MINUTES 44 SECONDS EAST, 62.69 FEET;
NORTH 24 DEGREES 21 MINUTES 45 SECONDS EAST, 37.48 FEET;
NORTH 32 DEGREES 59 MINUTES 19 SECONDS EAST, 43.77 FEET;
NORTH 47 DEGREES 32 MINUTES 41 SECONDS EAST, 41.03 FEET;
NORTH 61 DEGREES 43 MINUTES 30 SECONDS EAST, 96.54 FEET;
NORTH 77 DEGREES 09 MINUTES 34 SECONDS EAST, 48.41 FEET;
NORTH 87 DEGREES 17 MINUTES 58 SECONDS EAST, 64.77 FEET;
NORTH 71 DEGREES 59 MINUTES 45 SECONDS EAST, 51.34 FEET;
NORTH 60 DEGREES 36 MINUTES 40 SECONDS EAST, 60.94 FEET;
NORTH 49 DEGREES 34 MINUTES 26 SECONDS EAST, 129.89 FEET;
NORTH 81 DEGREES 52 MINUTES 12 SECONDS EAST, 12.95 FEET;
NORTH 88 DEGREES 02 MINUTES 31 SECONDS EAST, 71.45 FEET;
NORTH 68 DEGREES 44 MINUTES 58 SECONDS EAST, 23.58 FEET AND
NORTH 52 DEGREES 26 MINUTES 29 SECONDS EAST, 32.22 FEET TO A POINT;
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THENCE LEAVING THE SAID KNOX CREEK, SOUTH 89 DEGREES 07 MINUTES 10 SECONDS EAST, 2625.51 FEET TO A CONCRETE MONUMENT FOUND ON THE WEST RIGHT-OF-WAY OF WALL TRIANA HIGHWAY; THENCE ALONG THE SAID WEST RIGHT-OF-WAY, SOUTH 01 DEGREES 25 MINUTES 15 SECONDS WEST, 2681.28 FEET TO A CONCRETE MONUMENT FOUND (DAMAGED); THENCE CONTINUE ALONG THE SAID WEST RIGHT-OF-WAY, SOUTH 01 DEGREES 39 MINUTES 56 SECONDS WEST, 59.90 FEET TO THE POINT OF BEGINNING AND CONTAINING 478.22 ACRES, MORE OR LESS.

#### LESS AND EXCEPT:

A 0.66 ACRE TRACT OF LAND CONVEYED TO JOHN T. CLIFT BY LIFE ESTATE DEED RECORDED IN THE OFFICE OF THE JUDGE OF PROBATE OF MADISON COUNTY, ALABAMA, IN DOCUMENT NUMBER 20150814000451640

#### ALSO LESS AND EXCEPT:

A 3.00 ACRE TRACT OF LAND CONVEYED TO JACK T. CLIFT BY LIFE ESTATE DEED RECORDED IN THE OFFICE OF THE JUDGE OF PROBATE OF MADISON COUNTY, ALABAMA, IN DOCUMENT NUMBER 20150814000451650 BEING

THE NET ACREAGE OF THE ABOVE DESCRIBED BEING 474.56 ACRES, MORE OR LESS.

{H0496621.1}

Clift Farm Residential Declaration

59

Instrument #: 2019-00083282 Seq: 63

File Number: 201900083282 Page 63 of 64

#### **ALSO INCLUDING**

ALL THAT PART OF SECTION 30, TOWNSHIP 3 SOUTH, RANGE 2 WEST OF THE HUNTSVILLE MERIDIAN, MADISON COUNTY, ALABAMA, BEING MORE PARTICULARLY DESCRIBED AS COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 30, THENCE NORTH 00 DEGREES 27 MINUTES 10 SECONDS EAST, 2513.37 FEET TO A POINT; THENCE NORTH 88 DEGREES 16 MINUTES 59 SECONDS WEST, 31.20 FEET TO A POINT ON THE WEST RIGHT-OF-WAY OF BALCH ROAD, THE POINT OF BEGINNING OF THE TRACT HEREIN DESCRIBED;

THENCE FROM THE POINT OF BEGINNING NORTH 88 DEGREES 25 MINUTES 20 SECONDS WEST, 1184.58 FEET TO A POINT;

THENCE NORTH 03 DEGREES 32 MINUTES 36 SECONDS EAST, 144.49 FEET TO A CAPPED IRON PIN FOUND;

THENCE NORTH 87 DEGREES 09 MINUTES 13 SECONDS WEST, 128.78 FEET TO A 1 INCH OPEN PIPE;

THENCE NORTH 01 DEGREES 05 MINUTES 51 SECONDS EAST, 756.98 FEET TO A POINT;

THENCE SOUTH 88 DEGREES 54 MINUTES 09 SECONDS EAST, 160.00 FEET TO A POINT:

THENCE SOUTH 01 DEGREES 05 MINUTES 51 SECONDS WEST, 192.55 FEET TO A POINT;

THENCE SOUTH 88 DEGREES 54 MINUTES 09 SECONDS EAST, 1161.38 FEET TO A POINT ON THE WEST RIGHT-OF-WAY OF BALCH ROAD;

THENCE ALONG THE SAID WEST RIGHT-OF-WAY, SOUTH 01 DEGREES 30 MINUTES 05 SECONDS WEST, 661.53 FEET TO A POINT;

THENCE CONTINUE ALONG THE SAID WEST RIGHT-OF-WAY, SOUTH 10 DEGREES 02 MINUTES 56 SECONDS WEST, 61.89 FEET TO THE POINT OF BEGINNING AND CONTAINING 21.25 ACRES, MORE OR LESS.

LESS AND EXCEPT A 2.0 ACRE TRACT FOR PIKE CEMETERY.

Filed/Cert: 12/20/2019 02:11:00 PM Fee Amt: \$183.25 Page 64 of 64 Madison county, AL FRANK BARGER Probate Judge FRANK BARGER Probate Judge File 2019-00083282

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Clift Farm Residential Declaration