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Madison Cnty Judge of Probate, AL
09/05/2014 11:49:10 AM FILED/CERT

**AMENDMENT TO DECLARATION OF PROTECTIVE COVENANTS
AND BY-LAWS FOR OVERLAND COVE SUBDIVISION**

This Amendment to Declaration of Protective Covenants and By-Laws for Overland Cove Subdivision (this "Amendment") is made this 3rd day of ~~August~~ September, 2014 by **DILTINA DEVELOPMENT CORPORATION**, an Alabama corporation ("Declarant").

BACKGROUND:

WHEREAS, the Community is governed by Declaration of Protective Covenants for Overland Cove Subdivision dated May 15, 2008 by Declarant, recorded as Document No. 20080519000321790 in the Office of Probate of Madison County, Alabama, as affected by Ratification of Declaration of Protective Covenants dated May 29, 2008, recorded as Document No. 20080530000350410, aforesaid records, as affected by Ratification of Declaration of Protective Covenants dated April 30, 2008, recorded as Document No. 20080521000329760, aforesaid records, as affected by Ratification of Declaration of Protective Covenants dated June 4, 2008, recorded as Document No. 20080609000370200, aforesaid records, as affected by Appointment and Removal by Declarant of Directors for Overland Cove Homeowners Association, Inc. dated October 5, 2009, recorded as Document No. 20091013000646010, aforesaid records, as affected by Appointment and Removal by Declarant of Directors for Overland Cove dated May 25, 2010, recorded as Document No. 20100720000398520, aforesaid records, as affected by Appointment and Removal by Declarant of Directors for Overland Cove dated August 4, 2010, recorded as Document No. 20100823000475160, aforesaid records (as such Declaration of Protective Covenants may have been otherwise modified or amended, collectively, the "Declaration"), and By-Laws of Overland Cove Homeowners Association, Inc. dated May 15, 2008 ("By-laws");

WHEREAS, pursuant to Article XII, Section 4 of the Declaration, so long as Declarant has the right unilaterally to subject additional property to the Declaration as provided in Article IX of the Declaration, Declarant may unilaterally amend the Declaration for any purpose that does not adversely affect title to the property of any Owner;

WHEREAS, pursuant to Article IX, Section 1 of the Declaration, Declarant currently has the right to subject additional property to the terms of the Declaration;

WHEREAS, pursuant to Section 6.7 of the By-laws, so long as the Declarant has the right to appoint and remove officers and directors of the Association, Declarant may unilaterally amend the By-laws of the Association;

WHEREAS, pursuant to Section 3.3 of the By-laws, Declarant currently has the right to appoint and remove officers and directors of the Association;

WHEREAS, for the purpose of preserving, enhancing and maximizing the marketability of title of all Lots located within the Community and to promote recreation, health, safety, welfare, common benefits, and enjoyment of the Owners and Occupants in the Community, Declarant desires to amend certain provisions of the Declaration and By-Laws; and

WHEREAS, Declarant hereby executes this Amendment to memorialize certain changes to the terms and conditions of the Declaration and By-laws.

AGREEMENT:

WOLFE JONES
PICK UP

NOW, THEREFORE, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) in hand paid, the premises and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, Declarant hereby amends the Declaration as follows:

1. **Recitals; Defined Terms.** The parties hereto acknowledge and agree that the recitals set forth above are true and correct and are incorporated herein by this reference; provided, however, that such recitals shall not be deemed to modify the express provisions hereinafter set forth. Defined terms used herein, but not otherwise defined, shall have the meaning set forth in the Declaration.

2. **Property Subject to this Declaration.** Article II, Section 1 of the Declaration is hereby modified to include Phase II of the Community to the Property subject to this Declaration. **Exhibit "B"** of the Declaration is hereby deleted and replaced with **Exhibit "B"** attached hereto.

3. **Association and Voting Rights.** Article III, Section 2(b)(ii) of the Declaration is amended by deleting "January 1, 2015" and replacing it with "January 1, 2020".

4. **Directors Appointed by Declarant.** Section 3.3(a) of the By-laws is hereby deleted and replaced with "(a) twelve years from the date the Declaration was recorded."

5. **Borrowing.** Section 3.22 of the By-Laws is hereby deleted in its entirety and replaced with the following:

"The Association shall have the power to borrow money for any legal purpose; provided, however, except as otherwise provided in the Declaration, the Board shall obtain membership approval in the same manner as for special assessments, in the event the the total amount of such borrowing exceeds or would exceed twenty percent (20%) of the annual budget of the Association. Notwithstanding the foregoing, the Board (with the consent of the Declarant) shall have the authority to authorize the Association to borrow money without the approval of the members of the Association for purpose of constructing a club house and pool within the Community."

6. **Maintenance; Conveyance of Common Property by Declarant to Association.** The following new Sections 6 and 7 are inserted into Article V of the Declaration:

Section 6 Amenities. Notwithstanding anything else in this Declaration to the contrary, the Declarant shall have the unilateral right, but not the obligation, to construct a clubhouse, pool, or other amenities on the Common Property of the Community (collectively or individually, the "Amenities"). The determination of whether Amenities will be constructed on the Common Property will be determined in the sole and absolute discretion of the Declarant. This right shall include the express right to determine the type and quality of Amenities.

Section 7. Financing of Amenities. Notwithstanding anything else contained in this Declaration to the contrary, Declarant or the Board of Directors of the Association (with the prior consent of Declarant) may unilaterally exercise, enforce, and carry out the rights of the Association to mortgage, pledge, or hypothecate any or all of the real property, including without limitation any clubhouse, pool, or other amenities, located within the Common Property of the Community. The rights described in this Article V, Section 7 shall include the express right to obtain construction and/or permanent financing or refinancing for the Amenities. The maker under any promissory note will be the Association. Any Mortgagee may rely on this Article V as affirmative and full evidence of the authority of the Declarant or Board of Directors, as the case may be, to execute such loan documents, on behalf of the Association, as may be reasonable and necessary to carry

out the rights set forth in this Article V. The Declarant's rights set forth in this Article V shall not be subject to review or vote by the members of the Community."

7. **Notices under the By-Laws.** Section 6.6 of the By-Laws is hereby deleted and replaced with the following:

"**Section 4. Notices.** Unless otherwise specified in the Declaration or By-Laws, notices, demands, bill statements or other communications required or permitted to be sent under the Declaration or these By-Laws shall be in writing and shall be deemed to have been duly given if delivered: (i) personally, (ii) by first class mail, postage pre-paid (iii) by electronic mail, and (iv) by overnight delivery service:

(a) If to a Member at the address (including electronic mail) which the Member has designed in writing and filed with the Secretary or, if no address has been designated, at the last known address of the Member;

(b) If to the Association, the Board of Directors or the managing agent, at the principal office address (including electronic mail) of the Association or the managing agent, if any, or at such other address as shall be designated by notice in writing to the Members.

If there are multiple Owners of a single piece of property, notice to one (1) party shall be deemed notice to all. Multiple Owners may designate one (1) Owner as the Person entitled to receive notice of Association matters by so notifying the Association in writing. The term "in writing" as used in the By-laws shall include any electronic communication.

The preferred method of delivery of notice as required herein shall be electronic mail. To the extent any Member does not have an electronic mail account or access, then notices will be sent by another permitted delivery method."

8. **Indemnification.** The Declarant shall be considered an indemnified party (like officers and Directors) as described in Article XII, Section 9 of the Declaration. As a principal in Declarant, Michael W. Friday shall also be considered an indemnified party under the terms of Declaration.

9. **Ratification.** Declarant hereby ratifies and reaffirms the terms and conditions of the Declaration, By-Laws and any and all prior actions of Declarant, the HOA Board or any other party with respect to the establishment of the HOA, actions of the ACC, actions of Declarant, and any other action that may have been taken with respect to governance of the Community pursuant to the Declaration and By-Laws. This ratification shall specifically include any actions or omissions of the HOA Board, past or present, with respect to approval of a proposed pool and clubhouse loan for the Community.

10. **Procedural Challenges to Decisions of the HOA Board.** Notwithstanding anything else contained in the By-Laws or Declaration to the contrary, and pursuant to Article XI, Section 4 of the Declaration, any procedural challenge to a decision or action taken by the HOA Board or Declarant must be made within six (6) months after such final decision of the HOA Board or Declarant. This limitation shall be effective immediately and shall apply retroactively to all prior decisions or actions previously taken by the HOA Board or Declarant.

11. **Severability.** Whenever possible, each provision of the Declaration and this Amendment shall be interpreted in such manner as to be effective and valid, but if the application of any provision of the Declaration or this Amendment to any Person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision

which can be given effect without the invalid provision or application, and, to this end, the provisions of the Declaration and this Amendment are declared to be severable.

12. **Agreements.** Subject to the prior approval of Declarant, so long as Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article IX of the Declaration, all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board shall be binding upon all Owners, their heirs, legal representatives, successors, assigns, and others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community.

13. **Miscellaneous.** Except as specifically modified and amended hereby, all of the terms, conditions and provisions of the Declaration remain in full force and effect. This Amendment may be executed in multiple counterparts, each one of which shall be deemed an original and one and the same document. This Amendment shall be governed by and construed in accordance with the laws of the State of Alabama.

IN WITNESS WHEREOF, the undersigned parties have caused this Amendment to be executed under seal by their duly authorized officers and representatives as of the day and year first above written.

DECLARANT:

DILTINA DEVELOPMENT CORPORATION,
an Alabama corporation

By: 
Name: Michael W. Friday
Its: President

STATE OF ALABAMA

COUNTY OF MADISON

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Michael W. Friday, whose name is signed as President of Diltina Development Corporation, an Alabama corporation, to the foregoing Amendment, and who is known to me, acknowledged before me on this day, that he signed the foregoing Amendment voluntarily and with full authority on the day the same bears date.

Given under my hands this 3rd day of ~~August~~ ^{Sept}, 2014.


Notary Public
My Commission Expires 05-25-2015



**Prepared by and After Recording
To be returned to:**

Overland Cove Homeowners Association, Inc.
7454-A Hwy 72 W

Madison, AL 35758
Attn: Jeannie Samz
256-837-0999