

STATE OF ALABAMA

MADISON COUNTY

AMENDED  
SUPPLEMENTAL DECLARATION  
OF  
MALLARD'S LANDING PHASE II  
SUBDIVISION

WHEREAS heretofore on the 8<sup>th</sup> day of April, 1992, the undersigned Hampton Community, Inc., an Alabama corporation as Declarant, did promulgate and file for record Declaration of Protective Covenants for Hampton Cove, a planned residential community, which said Declaration of Protective Covenants are recorded in Deed Book 789, Page 182, Office of the Judge of Probate of Madison County, Alabama (the "Declaration").

WHEREAS, Article X, Section 1 of said Declaration of Protective Covenants of Hampton Cove provides that the Declarant may subject additional parcels of real property described in Exhibit "C" of said Declaration and may promulgate Special Parcel Use Restrictions for such additional parcels of real property platted within Hampton Cove by the filing of such use restrictions in the Office of the Judge of Probate of Madison County, Alabama, as provided for in Article VI, Section 29 of said Declaration. And,

WHEREAS, the undersigned Smith & Patterson Homes, Inc., an Alabama corporation, as the owner of the hereinafter described real property known as MALLARD'S LANDING AT HAMPTON COVE has recorded a Supplemental Declaration to the above described Declaration of Protective Covenants for Hampton Cove, which was recorded on February 6, 2004, and amended April 20, 2004, and further amended on February 15, 2005, (collectively the "Phase One Supplemental Declaration"). And,

WHEREAS, the undersigned Smith & Patterson Homes, Inc., is the owner of the hereinafter described real property known as MALLARD'S LANDING AT HAMPTON COVE, PHASE TWO, and as such Owner desires to subject the hereinafter described real property to the Declaration and the covenants set forth below.

NOW THEREFORE, pursuant to the provisions of said Article X, Section 1 and Article VI, Section 29 of the Declaration of Protective Covenants of Hampton Cove as the same are recorded in the Office of the Judge or Probate of Madison County, Alabama, the undersigned, Hampton Community, Inc., and the undersigned Smith & Patterson Homes, Inc., (the "Developer"), do by these presents add the real property described in attached exhibit "A" (the "Property") located at MALLARD'S LANDING AT HAMPTON COVE SUBDIVISION, PHASE TWO, (the "Subdivision"), and do make and promulgate the following use restrictions pertaining to the use and enjoyment of all the lots of MALLARD'S LANDING AT HAMPTON COVE SUBDIVISION, PHASE TWO, (each lot being referred to as a LOT") according to the plat of said Subdivision recorded, or to be recorded, in the Office of the Judge of Probate of Madison County, Alabama. The use restrictions described in this instrument are to be in conjunction with the use restrictions as described in said Declaration of Protective Covenants of Hampton Cove. Except as

specifically amended below, the Declaration is hereby republished and is ratified and affirmed as to the Property.

1. Approval Required. Approval by the Architectural Control Committee is required before construction begins on any dwelling/building. A submittal sheet, site plan, house plan and check for \$150.00 must be submitted before construction.

2. Exterior Requirements. All dwellings and permitted accessory buildings constructed on the lots of said subdivision shall have an exterior of at least 60% masonry brick or stone construction, including gable ends, except that all dwellings facing the Eastern By-Pass shall have at least 80% masonry brick or stone construction, including gable ends. The purpose of this provision is to restrict construction that has only siding on any given side thereby creating additional architectural interest.

3. Roofs. Roofs of dwellings constructed on all of said lots shall have a minimum of 6/12 roof pitches and shall be of architectural grade shingles and a color approved by the Architectural Control Committee.

4. Garages. All dwellings may have either a front or front/side entry garage. A minimum of 10 of the 39 homes will have a front/side entry garage.

5. Minimum Square Footage. Dwellings constructed on the lots of said Subdivision shall have at least sevenhundred (1700) square feet of heated area.

6. Chimneys. All chimneys that are on the exterior wall must have brick or stone on the three exterior sides of the chimney. All interior chimneys may have a siding or stucco product on all four sides of the chimney.

7. Fences and Easements. No fence or fencing type barrier of any kind shall be placed, erected, allowed, or maintained upon any portion of the Community, including any Residence, without the prior written consent of the Board or its designee. Fences will be compatible with the home and shall be a Shadow Box style. No fence will be higher than 6 feet from the final ground level to the top of the fence. Each side of the fence shall be finished, specifically *the structural characteristics must be covered*. No roughsawn board of any kind will be used in the fence. All wood will be opaque stained in a color to be determined by the Developer and/or the Board and maintained in a satisfactory manner. Fences, regardless of construction, will not be permitted any nearer to front lot line than the rear most corner of the dwelling except for Dwellings which have a side porch. For such Dwellings, fences will be allowed no closer to the front lot line than the front most portion of the porch. Notwithstanding any other provisions regarding fences to the contrary, all fences for Lake Lot owners must be 4 foot high wrought iron/powder coated aluminum fences and fences in MALLARD'S LANDING AT HAMPTON COVE, PHASE TWO, shall not require stone or brick columns. All fences of like material shall be the same color. All wrought iron/powder coated aluminum will be black. Any fence located on the boundary shall be considered as a joint fence with each adjoining owner being responsible for the up-keep and maintenance of the joint fence, unless the adjacent property is Common Area, in which case the fence

shall be deemed to be owned and maintained solely by the Owner. All fences must have a gate to allow entrance by lawn maintenance employees, which must remain unlocked at all times.

8. Mailboxes. All homes constructed within the Subdivision shall have a uniform mailbox, the design of which will be furnished by the Declarant or the Developer.

9. House Numbers. House numbers shall be on the mailbox.

10. Satellite Dish Restrictions. All satellite dishes must be 20 inches or smaller in diameter. Dishes may not be visible from the front of the street or house, and cannot be placed on a pole or stake in the yard. Homeowners must be present when satellites are installed, and should consider all the options available to them before signing a contract.

11. Landscape Requirements:

(a) All planting beds shall be mulched with natural brown bark, using edging materials such as brick, steel, stacked stone or hi-grade vinyl.

(b) Shrubbery required in the front yard shall be a minimum of twelve (12) shrubs, with all foundation planting to be at least 90% evergreen and 3 gallon in size (36" in height of B & B) and must be spaced no further than 3 feet apart.

(c) The front and rear yard shall each be planted with one (1) large tree and one (1) small tree that may be planted in the bedding area. Examples of large trees are: maple, Japanese Zelkova, Golden Rain Tree, Chinese Pistache, Chinese Elm. Example of small trees are: Nellie R. Stephens Holly, Dogwood, Japanese maple, crepe myrtle. NO PEAR TREES OF ANY TYPE are allowed.

(d) Sod is required in all front, side and rear yards, each of which shall have an irrigation system.

(e) A minimum of three (3) screening type shrubs must be planted by each patio to serve as a privacy screen between yards. Examples of screening plants are: Nellie R. Stephens Holly, sky pencil juniper, needle point holly, Cleara, Emily Brunner, and Oak Leaf Holly-all evergreens. Privet or Eleagnes are "not" allowed.

(f) Air conditioners must be screened with 3 gallon plant material.

12. Maintenance Dues. Maintenance and upkeep of the lawns, shrubs and vegetation of the front yards of all dwellings, except flowers planted by the Owners, shall be by a Special Parcel Assessment applicable to all lots within the subdivision and shall be calculated and imposed by the Hampton Cove Owners Association (the "Association") as set forth in the Declaration and shall be paid by each dwelling Owner quarterly to such Association. Such Special Parcel Assessment shall be in addition to a general annual assessment applicable to all Owners of lots within the Hampton Community. Such Parcel

Assessment shall be due for each Lot REGARDLESS of whether or not any Owner elects to maintain their own property or if a Lot has "maintenance free" landscaping.

13. Developer Rights. Developer or its assigns may carry on such construction, selling and leasing activities on the property as it deems necessary, and may maintain upon such portions of the property as it deems necessary, such facilities as may be necessary, expedient or incidental to the completion of construction and to the selling or leasing of Lots, including, but not limited to, maintenance of a sales office, model residences, signs, storage areas, construction facilities and construction offices.

Further, the Developer shall have and does hereby reserve a transferable easement on and over certain lots for the purpose of making improvements on adjoining property and for the purpose of doing all things in connection therewith. In that connection and by way of clarification but not limitation, the easements reserved by the Developer, its successors and assigns, in, on, over, under and through the property include those for the erection, installation, construction, and maintenance of wire, lines, conduits, and necessary or proper attachments in connection with the transmission of electricity, gas, water, telephone, community antennae, television cables, and other utilities; for the construction of dwellings and other improvements on the Lots; for the installation, construction and maintenance of storm water drains, public and private sewers, and any other public or quasi-public utility facility; for the use of any streets, drives or temporary facilities installed for parking vehicles in connection with efforts to market the dwellings or Lots; for the installation of chimneys from the adjacent property; and for the maintenance of such other facilities and equipment as in the sole discretion of Developer may be reasonably required, convenient or incidental to the completion, improvement and sale of dwellings or Lots.

14. Garbage Cans. Garbage cans will be allowed in front of dwellings only on days of garbage pick-up by City of Huntsville, Alabama.

15. Basketball goals, etc. No basketball goals, swing sets, trampolines, swimming pools, or like structures/equipment shall be allowed in the front yards or driveways of the dwellings.

16. Docks. No docks may be constructed on any Lot nor on any portion of the Common Area.

17. Easement for Utility Encroachments. Each Lot is subject to a permanent easement in favor of both the Association and the City of Huntsville, d/b/a Huntsville Utilities, along with their respective successors and assigns, over, under and upon the portion of each Lot that lies in the front of the Dwelling, for the installation and maintenance of service lines to other Dwellings in the Subdivision. The purpose of this easement is to allow the Developer and/or Huntsville Utilities to install and maintain utility service lines across any particular Lot in order to provide service to adjacent Lots.

18. Definitions. The following words, when used in this Supplemental Declaration or in any subsequent Supplementary Declaration (unless the context shall prohibit), shall have the following meanings. Any word not defined herein shall have the meaning assigned in the Declaration or in the Phase One Supplementary Declaration.

(a) **"Articles of Incorporation"** shall mean the Articles of Incorporation of Hampton Cove Owners Association, Inc., as such document may be amended.

(b) **"Association"** shall mean and refer to Hampton Cove Owners Association, Inc., a nonprofit, nonstock, membership corporation incorporated under the laws of the State of Alabama, its successors and assigns.

(c) **"Association Expenses"** shall mean and include the actual and estimated expenses of operating the Association, both for general and Parcel purposes, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to the Declaration, any supplemental declaration, the By-Laws, and the Articles of Incorporation.

(d) **"Board of Directors"** or **"Board"** shall mean the governing body of the Association, and the Board shall have such duties as are provided in the Declaration, the By-Laws, the Articles of Incorporation, and the Alabama Nonprofit Corporation Act.

(e) **"By-Laws"** shall refer to the By-Laws of Hampton Cove Owners Association, Inc.

(f) **"Certificate of Occupancy"** shall mean any required certification issued by the appropriate governmental authorities as a prerequisite to occupancy of any Residence.

(g) **"Common Expense"** shall mean and include (i) expense of administration, maintenance, repair or replacement of the Common Properties; (ii) expenses agreed upon as Common Expenses by the Association; (iii) expenses declared Common Expenses by the provisions of this Declaration; and (iv) all other sums assessed by the Board pursuant to the provisions of this Supplementary Declaration.

(h) **"Common Properties"** or **"Common Areas"** shall mean those easements and common and mutual appurtenances which are shown on the recorded plat for the Subdivision and easements appurtenant thereto and required to be maintained by the Association, and are intended for the common use and benefit of all Owners.

(i) **"Community"** shall mean and refer to the property that is subjected to this Supplemental Declaration and any property subjected to these particular restrictions in future declarations.

(j) **"Developer"** shall mean Smith & Patterson Homes, Inc., an Alabama corporation.

(k) **"Dwelling Unit"** or **"Dwelling"** shall mean a single family residence situated upon a Lot and authorized for use and occupancy by a single family.

(l) **"Special Parcel Assessments"** shall mean assessments levied for Association Expenses determined by the Board to benefit all Owners and Occupants of the Subdivision, that is in addition to the base dues for the Association and for Hampton House.

(m) **"Majority"** means those eligible votes, Owners, or other group as the context may indicate totaling more than fifty (50%) percent of the total eligible number.

(n) **"Mortgage"** means any mortgage, deed of trust, and any and all other similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of an obligation.

(o) **"Mortgagee"** shall mean the holder of a Mortgage.

(p) **"Occupant"** shall mean any Person occupying all or any portion of a Residence or other property located within the Community for any period of time, regardless of whether such Person is a tenant of the Owner of such property.

(q) **"Owner"** shall mean the recorded Owner or Owners, whether one (1) or more persons, firms, associations, corporations, or other legal entities, of the fee simple title to any Lot, notwithstanding any applicable theory of a Mortgage, Owners shall not mean or refer to the Mortgagee, unless and until such Mortgagee has acquired title pursuant to foreclosure, nor shall the term "Owner" mean or refer to any lessee or tenant of any Owner. The Developer may be an Owner.

(r) **"Person"** means any natural person, as well as a corporation, joint venture, partnership (general or limited), association, trust, or other legal entity.

(s) **"Residence"** shall mean a portion of the Community designated on an approved layout plan or subdivision plat, as more particularly described below, for any type of independent use and occupancy as a residence by a single family. Residence shall include all portions of the land owned as well as any structure thereon, as described above. A Residence shall come into existence when a Certificate of Occupancy is issued by the proper governing authority

(t) **"Supplementary Declaration"** shall mean this amendment to the Declaration and subsequent Supplemental Declarations.

The above described use restrictions are in addition to those use restrictions pertaining to Hampton Cove as recorded in Deed Book 789, page 182, (and amended in Deed Book 789, Page 398, and Deed Book 826, Page 585) Office of the Judge of Probate of Madison County, Alabama and shall run with the land and become binding upon all the owners of lots embraced within MALLARD'S LANDING AT HAMPTON COVE SUBDIVISION, their heirs, successors and assigns.

Enforcement of the above described additional use restrictions shall be in the same manner and direction as described in the Declaration of Protective Covenants of Hampton Cove as described above.

IN WITNESS WHEREOF, the undersigned Hampton Community, Inc. and Smith & Patterson Homes, Inc., have caused this instrument to be executed on this the \_\_\_\_\_ day of \_\_\_\_\_, 2006.

HAMPTON COMMUNITY, INC.

By: [Signature]  
Its: PRESIDENT

SMITH & PATTERSON HOMES, INC.

By: [Signature]  
Its: President

STATE OF ALABAMA  
COUNTY OF MADISON

Before me, the undersigned authority, this day personally appeared John W. Hays, whose name as PRESIDENT of Hampton Community, Inc., an Alabama corporation is signed to the foregoing instrument and who is known to me, acknowledged before me that, on being informed of the contents of said instrument, he executed the same voluntarily on the day the same bears date in his capacity as such officer and for the act of said corporation.

This the 29 day of November, 2006.

[Signature]  
NOTARY PUBLIC  
My Commission Expires: \_\_\_\_\_

STATE OF ALABAMA  
MADISON COUNTY

Before me, the undersigned authority this day personally appeared Wayne Patterson, whose name as President of Smith & Patterson Homes, Inc., an Alabama corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me that, on being informed of the contents of said instrument, he executed the same voluntarily on the day the same bears date in his capacity as such officer and for the act of said corporation.

This the 28 day of November, 2006.

[Signature]  
NOTARY PUBLIC  
My Commission Expires: 10/21/08

THIS INSTRUMENT PREPARED BY:

Samuel H. Givhan, Wilmer & Lee, P.A., 100 Washington Street, Huntsville, Alabama 35801

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**EXHIBIT A**

**Lots 1 - 39, according to the plat of Mallard's Landing Phase II, as recorded as Instrument Number 20061027000735000, Probate Records of Madison County, Alabama.**