

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
MCALLISTER TRAILS SUBDIVISION**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made this \_\_\_29\_\_\_ day of \_\_\_October\_\_\_, 2018 by CWS, L.L.C., an Alabama limited liability company (hereinafter referred to as the "Declarant").

**WITNESSETH:**

WHEREAS, CWS, L.L.C. is the Owner of that real property described in the plat of a Subdivision (hereinafter referred to McAllister Trails) and recorded in the Office of the Judge of Probate of Houston County, Alabama, in Plat Book \_\_\_\_\_, Page \_\_\_\_\_ all of the property lying and being in Houston County, Alabama;

WHEREAS, the Declarant desires to establish and enforce uniform standards of development quality and to provide for the effective preservation of the appearance, value, and amenities of McAllister Trails, which establishment, enforcement, and preservation shall benefit all Owners of the property located thereon and, to that end, desires to subject said real property to the protective covenants, conditions, and restrictions herein contained, all of which are for the benefit of the said real property and the Owners thereof; and

NOW, THEREFORE, the Declarant hereby declares that the lots of McAllister Trails shall be held, sold, and conveyed subject to the following covenants, conditions, restrictions, and easements which are for the purpose of protecting the value and desirability of, and which shall with, the property and be binding on all parties having any right, title, or interest in the property or any part thereof, their heirs, successors and assigns (hereinafter "Owner" or "Owners"), and shall inure to the benefit of each Owner thereof.

**ARTICLE I  
GENERAL COVENANTS AND RESTRICTIONS**

1.1 Land Use and Building Type. No lot shall be used except for single family residential purposes. No building shall be erected, altered, placed or permitted to remain on any lot other than one detached building, not to exceed two stories in height. The building plan and plot plan must have prior approval from the Architectural Control Committee (hereinafter "ACC"). For structures other than main building refer to Section 1.2. Anything other than a single house on a single lot shall be approved by ACC.

1.2 Architectural Control. All TV satellite dishes shall not be visible from the street. No main building, storage building, cabana, swimming pool, fences, walls, basketball goals, clotheslines, or any other structure shall be erected, placed or altered on any lot in the subdivision until the plans, material specifications and plot plan showing the location and design of such buildings or structures have been expressly approved as to conformity and

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PATRICIA P. DAVENPORT, Judge of Probate, Houston County, Alabama

harmony of external design and location with existing structures in the subdivision and as to the location of the buildings or other structures, in respect to topography and finished ground elevation by the ACC. Approval shall be as provided in Article II.

1.3 Size and Quality. It is the intention and purpose of these covenants to assure that all dwellings are of quality workmanship and material substantially the same or better than that which can be produced on the date these covenants are recorded. The heated and cooled area of the main structure, exclusive of porches and garages, shall be no less than 2200 square feet.

1.4 Exterior Materials Specifications:

- a. Wall Material: Exterior wall material shall be brick on four sides up to a minimum of plate height on sides and rear. The front elevation shall have a minimum of 18" of exposed brick rowlock above final grade. Wall material above plate height shall be brick or fiber cement. Indentions for covered porches may be brick and/or fiber cement. The brick used must be selected from the following companies and styles (alternative submissions can be made to the ACC for approval):

Boral	Capers Island	Columbus	Charleston
	Old Overton		
	Weracoba 2	Henry	Avondale
	Magnolia Bay		Chimney Rock
			Sea Side
			Valley Creek
General Shale	Lincoln Park		
	Castle Rock		

- b. Roofs: All houses shall have pitched roofs with a minimum roof pitch of 5/12. Shed roofs for porches that protrude from the back of the house may have a lower pitch. Houses may have gabled or hipped roofs or a combination thereof. Roofing colors are to be limited to the following colors:

<u>TAMKO</u>	<u>CERTAINTEED</u>
Rustic Slate	Charcoal Black
Weathered Wood	Moire Black
Black Walnut	Weathered Wood
Rustic Black	Driftwood

- c. Color Palette: Exterior color selections shall be submitted for ACC approval.

1.5 Landscaping. The Owner shall plant and maintain a minimum of two (2) hardwood trees of not less than a 1-1/2" caliper. The trees may be oak, maple, or elm and will be placed in the front yard. All yards shall have sod at the front, sides and minimum 20' of the rear yard. Air conditioning units must be covered by a brick wall or shrubs so that it isn't viewable from the street.

1.6 Building Location. The setback line will vary depending on the lot condition and the location of the adjacent home. No building shall be located on any lot nearer than 25' from the property line. No building shall be located on any other lot nearer than 25' from the property line. A minimum of 25' building setback on any side street or 5 feet to any interior lot lines. For the purpose of this covenant, eaves, steps and fireplace chases shall not be considered as part of an interior, provided, however, that this shall not be construed to permit any portion of a building or a lot to encroach upon another lot. All setbacks shall be approved by the ACC.

1.7 Driveways. No lot shall have more than one driveway, which will be no wider than 12' at the street, but may start tapering past the property line.

1.8 Garages. Garages may be directly attached to the house. All garages must be side entered unless approved by ACC.\* Garage roofs shall be consistent in shape and pitch to the main house roof structure. Carports are NOT allowed. \* Minimum of 2 car garages.

1.9 Walls and Fencing. No fence or wall shall be erected or placed upon any lot unless the design, construction and location of such fence or wall without the expressed written approval by the ACC. All sections of fences and walls that are visible from the street shall be constructed of wood or masonry or equivalent. Chain link fencing is not permitted. If the fencing is constructed of wood, the good side must be installed to the outside. Fencing shall not disrupt the flow of water for drainage purposes. All fences shall start at the rear corner of each house. Fencing installed by the developer on Lot's 1-4, Block "A" must be maintained by the lot owner.

1.10 Mailboxes. All mailboxes and numbers shall be the same design, as specified by the ACC.

1.11 Nuisance. No noxious or offensive activities shall occur on any lot, nor shall anything be done thereon which may be or may become any annoyance or nuisance to the neighborhood.

1.12 Temporary Buildings. No building materials of any kind or character shall be placed or stored on the property until the Owner is ready to commence improvements and then such material or temporary building shall be placed within the property line of the lot or parcel of land upon which the improvements are to be erected and shall not be used for other than construction purposes; and expressly, such temporary structure or buildings shall not be used for residential or sales office purposes.

1.13 Storage Buildings. No storage building shall be erected or placed upon any lot that is not constructed with the same materials and workmanship as used in the main dwelling. All brick (to plate height) and shingles shall match the main dwelling. The design, construction, and location of such building shall be expressly approved by the ACC. No portable storage buildings are allowed.

1.14 Signs. No sign of any kind shall be displayed to the public view on any lot except a professional sign of not more than five square feet advertising the property for sale, or one sign used by a builder to advertise the property during the construction and sales period.

1.15 Animals and Pets. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any property, with the exception of dogs, cats, and other usual and common household pets in reasonable number, as determined by the Board. No animals shall be kept, bred, or maintained for commercial purposes within the property. All pets shall be reasonably controlled by the owner whenever outside a property and shall be kept in such a manner as to not become a nuisance by barking or other acts. Dog owner's shall not allow such dog to be at large (off the owner's property) upon the property of another of another without the property owner's permission, upon the public streets, or rights-of-way unless under the restraint of a leash or chain. The owners of the pet shall be responsible for all of the pet's actions. If, in the sole opinion of the Board, any animal becomes dangerous or an annoyance or nuisance in the property, or to nearby property or destructive to wildlife, they shall be removed from the property. Pet owners are responsible for proper disposal of pet waste in all common areas.

1.16 Disposal of Refuse. No garbage, trash, ashes, refuse, inoperative vehicles (that have been inoperative for more than thirty days), or other waste shall be thrown, or dumped on any lot or street in the subdivision or permitted to remain upon any such place. All incinerators or other equipment for the storage of, or disposal of such material shall be kept in a clean and sanitary condition.

1.17 Sight Distance at Intersection. No fence, wall, hedge, or shrub planting which obstructs sight lines at elevation between two and six feet above the roadway section of a street property line with the edge of a driveway shall be permitted. No trees shall be permitted to remain within such distance of such intersection unless the foliage line is maintained at a sufficient height to prevent obstruction of such lines.

1.18 Drying of Laundry. No structure or apparatus may be constructed for the outdoor drying of laundry or wash.

1.19 Excavations. No excavation, except such as is necessary for the construction of improvements, shall be permitted.

1.20 Boats, House and Travel Trailers. No house trailers, travel trailers or motor homes are allowed to be parked in the subdivision for more than 24 hours. No boat or utility trailer shall be parked where visible from the street.



1.21 Oil and Mining Operations. No oil drilling, oil development operations of any kind shall be permitted upon or in any lot, nor shall oil wells, tanks, mineral excavation or shafts be permitted upon or in any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.

## ARTICLE II ARCHITECTURAL CONTROL COMMITTEE

2.1 Membership. The initial ACC shall be composed of Charles H. Chapman, III, John Watson and Fred Saliba. In the event of death or resignation of any member of the committee, the remaining members shall have full authority to designate a successor. The members of the Committee shall not receive compensation for services performed pursuant to this covenant.

2.2 Procedure. All requests for approval shall be submitted in writing to the Committee. Such submittal must include a duplicate set of plans that will be retained by the Committee. Approval by the Committee shall be evidenced either by (i) the signature of an authorized member of the Committee on a set of plan; or (ii) a letter from the Committee approving the plans as submitted. As set forth hereinabove, no improvements to any lot may proceed without prior approval of the Architectural Review Committee.

2.3 Term. Until turn-over of the Association and the election of Directors by the membership of the Association, as set forth in Section 6.4 below, the Declarant shall have the sole and exclusive right to appoint and remove all members of the Architectural Review Committee. Upon turn-over of the Association, the Board of Directors elected by the membership of the Association shall then appoint the Architectural Review Committee.

## ARTICLE III EASEMENTS

3.1 Road Easements. The Declarant hereby expressly reserves unto itself and to its successors assigns, and invitees, forever, a non-exclusive perpetual road easement on, over, across and upon the roadways shown on the Plat of McAllister Trails Subdivision.

3.2 Utility and Drainage Easements. The Declarant reserves unto itself, its successors and assigns, a perpetual, non-exclusive easement and right, on, over, across, and under the ground to construct and maintain storm water drainage facilities and to erect, maintain, and use electric and telephone wires, cables, conduits, sewers, water mains, and other suitable equipment for the conveyance and use of electricity, telephone, gas, sewage, water, streetlights, or other public conveniences or utilities, and such other easements as

are shown on the recorded Plat of McAllister Trails. The easements expressly include the right to cut any trees, bushes, shrubs, hedges, etc. and include the right to grade, ditch, and any like action reasonably necessary to provide economical drainage and utility installation.

3.3 Entry Easements. Declarant reserves for the Declarant and the Association an easement across every lot, and the Declarant and the Association shall have the right to enter upon any lot for any of the purposes in this Declaration in order to exercise, enjoy and carry out any and all of the rights and powers of the Declarant or the Association stated in this Declaration. Entry upon any lot shall not be deemed a trespass, and the Declarant and the Association shall not be liable for any damage so created unless such damage is caused by the willful misconduct or negligence of the party against whom damages are sought to be collected.

3.4 Entry Easements. Declarant hereby expressly reserves for the Declarant and the Association a fifteen feet (15') wide perpetual easement for signage and landscaping. Lots 1 and 71, Block "A."

#### ARTICLE IV COMMON AREAS

4.1 Owner's Easements of Enjoyment. Every Owner of a lot shall have the right of use and enjoyment in and to the common areas shown on the Plat of McAllister Trails, which right of use and enjoyment shall be appurtenant to and shall pass with the title for every lot subject to the following provisions:

- a. The right of the Declarant and the Association, from time to time, to make and amend reasonable regulations concerning the use of the common areas; and
- b. The right of the Declarant and the Association to suspend the right of use and enjoyment of any common area by any Owner for any period during which any assessment against said Owner's lot remains unpaid.

4.2 Restrictions. All Owners shall be subject to the following restrictions regarding all common areas in McAllister Trails Subdivision:

- a. No child under the age of thirteen (13) shall be allowed in any common area without adult supervision.
  - b. No motorcycles, four wheelers, go-carts, or other motorized recreational or all-terrain vehicles allowed in any common area.
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ARTICLE V  
ASSESSMENT OF ANNUAL CHARGE

5.1 Personal Obligation of Owners. The Owner of any lot by acceptance of a deed or other conveyance for such lot, whether or not it shall be expressed in such deed or other conveyance, shall be deemed to covenant and agree to pay to the Declarant of the Association such fees that are assessed by the Declarant or the Association, and agrees that non-payment of such fees creates a lien on the Owner's lot. Notwithstanding the foregoing, the Declarant shall not be required to pay assessments on lots owned by the Declarant.

5.2 Assessment. All Owners, commencing with the year 2019, will be assessed a charge equal to a specified number of dollars per lot, commencing on the date of purchase. It is specifically understood and represented that the utility charges to each lot, including cable, sewer, water, electricity, telephone, gas (if any) and other utilities are the separate and personal responsibility of the lot Owner and are not part of any assessments provided for herein. Builders are not required to pay assessments until the property is sold or occupied.

5.3 Purpose of Assessments. The assessments levied by the Declarant or the Association shall be for the general purposes of promoting the recreation, health, safety, welfare, common benefits, and enjoyment of the Owners and occupants in McAllister Trails, and for the improvement and maintenance of the common areas of McAllister Trails, including without limitation the entrance, park, detention/drainage areas, and street lights (referred to herein as "Common Expenses").

5.4 Types of Assessments. There are hereby created assessments for Common Expenses as the Declarant or the Association may specifically authorize from time to time. There shall be two types of assessments: a) the Base Annual Assessment; and b) Special Assessments, each of which is described herein. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the McAllister Trails property, is deemed to covenant and agrees to pay these assessments.

5.5 Base Annual Assessment. The Base Annual Assessment shall be used to fund Common Expenses for the general benefit of all lots. The Base Annual Assessment of \$350.00 shall be paid yearly.

5.6 Special Assessments. In addition to Base Annual Assessment, the Declarant or the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Special Assessments shall be payable in such manner and at such times as determined by the Declarant or Association and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved. After turn-over of the Association by the Declarant, as set forth in Section 6.4, any Special Assessment shall require the affirmative vote or written consent of members holding more than 50 percent of the total votes.

5.7 Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each lot on the first day of the month following the month in which the Declarant or the Association first determines a budget and levies assessments pursuant to this Article. The first Base Annual Assessment levied on each lot shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the lot.

5.8 Assessment Notice. As soon as may be practical in each year, the Declarant or the Association shall send a written bill to each Owner stating the amount of the Base Annual Assessment as well as any other assessments assessed against each such lot, stated in terms of the total sum due, and that unless the member shall pay the Base Annual Assessment within thirty (30) days following the date of receipt of the bill, the same shall be deemed delinquent and will bear interest at the rate of twelve percent (12%) per annum until paid.

5.9 Base Annual Assessment Amount. The amount of the Base Annual Assessment shall be established annually by the Declarant or the Association.

5.10 Creation of Lien and Personal Obligation for Assessments. If an Owner shall fail to pay any assessments within sixty (60) days following receipt of the bill referred to in Section 5.8 hereof, and within thirty (30) days after additional written notice that the Owner is delinquent in his payment, in addition to the right to sue the Owner for a personal judgment. The Declarant or the Association shall have the right to enforce a lien on said property. All assessments, together with interest (at the rate set forth hereinabove), as computed from the date the delinquency first occurs. Late charges, costs, and reasonable attorney's fees, shall be a charge and continuing lien upon each lot against which the assessment is made until paid. Each such assessment, together with interest, late charges, costs and reasonable attorney's fees also shall be the personal obligation to the Owner of such lot at the time the assessment arose. Upon a transfer of title to a lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, any Mortgagee who obtains title to said lot by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments, which accrued prior to such acquisition of title.

5.11 Obligations of the Declarant or the Association with Respect to Funds. The Declarant or the Association shall not be obligated to spend in any calendar year all the sums collected in such year by way of the Base Annual Assessment or any other assessment, and carry forward as surplus any balances remaining; nor shall the Declarant or the Association be obligated to apply any such surpluses to the reduction of the amount of the Base Annual Assessment in the succeeding year, but may carry forward from year to year such surplus as the Declarant or the Association in its absolute discretion may determine to be desirable. The Declarant or the Association shall provide access to all Owners to annual accounting of funds expended and balances remaining.



ARTICLE VI  
MCALLISTER TRAILS PROPERTY OWNERS ASSOCIATION, INC

6.1 The Association. The Declarant shall cause to be formed an association to be known as McAllister Trails Property Owners Association, Inc. (referred to herein as the "Association"), with such powers and duties as are set forth in the articles and bylaws of the Association not inconsistent with this Declaration.

6.2 Membership. Every Owner of a lot, by virtue of such ownership, shall be a member of the Association. No Owner, whether one or more persons, shall have more than one (1) membership per lot owned. If a lot is owned by more than one person, all co-owners shall be entitled to the privileges of membership; however, there shall be only one vote per lot. All such co-owners shall be jointly and severally obligated to perform the responsibilities of Owners hereunder.

6.3 Board of Directors. The affairs of the Association shall be governed by a Board of Directors. The number of Directors of the Association shall initially be three (3). The Board of Directors of the Association may, by resolution of a majority of the existing Directors, change the number of Directors from time to time.

6.4 Declarant Directors; Turn Over of Association. The initial Directors shall be elected by the Declarant acting in its sole discretion and shall serve at the pleasure of the Declarant. The Declarant shall have the right to appoint the Board of Directors until no later than sixty (60) days after the closing of the sale of the last lot within McAllister Trails that is owned by Declarant or at such earlier time as Declarant voluntarily turn over these rights to the voting members of the Association. Each Owner, by acceptance of a deed or other conveyance of property within McAllister Trails, vests in Declarant such authority to appoint and remove Directors of the Association.

ARTICLE VII  
GENERAL PROVISIONS

7.1 Term or Restrictions; Amendment. These covenants and restrictions are to run with the land, and shall be part of all deeds and contracts or conveyances of any and all lots in this subdivision and shall be binding on all parties and all persons claiming under them for a period of 20 years, after which time said covenants shall be automatically extended for two (2) successive periods of ten (10) years. These covenants and restrictions may be changed or terminated, in whole or in part, by a duly recorded instrument signed by the then Owners of a majority of the lots. Until turnover of the Association as set forth hereinabove, any amendment to these covenants and restrictions shall require the affirmative vote or the written consent of the Declarant.

7.2 Proceedings against Violators. If any Owner, tenant or occupant of this subdivision shall violate or attempt to violate any of these covenants and restrictions while in force and effect, it shall be lawful for any other person or persons having any ownership interest in any lot in the subdivision to prosecute any proceedings at law or in equity against any

any lot in the subdivision to prosecute any proceedings at law or in equity against any person violating or attempting to violate such covenants and restrictions and either to them from doing so or to recover damages for such violations. In no event and under no circumstances shall a violator of any covenant or restriction herein contained, arrange a forfeiture or reverter to title.

7.3 Invalidation of any Covenants. Invalidation of these covenants or restriction by judgment or restrictions by judgment of court order shall in no way affect any other provision which shall remain in full force and effect.

7.4 Attorney Fees and Court Costs. If the party attempting to enforce these restrictions shall prevail in any proceeding at law or at equity, such party shall be entitled to recover reasonable attorney fees and court costs, which will be assessed against the party which is found to be in violation of such restrictions.

7.5 Abatement or Removal of Violations. Violations of any restrictions or covenant shall give the Declarant or the Association the right to enter upon the property where such violations exist and summarily abate or remove the same at the expense of the Owner, and such entry and abatement or removal shall not be deemed as trespass.

7.6 Deed Restrictions. The Declarant, its successors, or its designated representative, may make other restrictions applicable to any lot by appropriate provisions in the contract for deed or in any deed without otherwise modifying the general plan herein outlined, and such other restrictions shall inure to the benefit of other lots in the subdivision and shall bind the grantees and their respective heirs, successors or transferees in the manner as though they had been expressed herein.

Done this the 2<sup>nd</sup> day of NOV, 2018.

CWS, LLC, an Alabama limited liability company

By

Charles H. Chapman, III

STATE OF ALABAMA,  
HOUSTON COUNTY.

I, the undersigned authority in and for said County and State, hereby certify that Charles H Chapman, III whose name as Managing Partner of CWS, LLC, an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this date, that being informed of the said instrument, he, with full authority, executed the same voluntarily for and as the act of said Company.

Given under my hand and seal this the 2 day of NOV, 2018

Andre P. Balu  
Notary Public

My commission expires: 12-11-18

Recording Fee  
TOTAL

38.00  
38.00