

RECORDED 37.50
STATE OF ALABAMA
1 CERT
FILED

Nov 8 8 35 AM '93

MIS 75 1711-2
4

DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR CANEY CREEK ESTATES,
UNIT ONE

THIS DECLARATION, made on the date hereinafter set forth
by CANEY CREEK ESTATES, INC., hereinafter referred to as
"Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain property
located in Baldwin County, Alabama, which is more particularly
described as follows:

Commencing at the Northeast Corner of Section 36,
Township 5 South, Range 2 East, Baldwin County, Alabama,
thence run South 00° 36' 52" West, 1495.28 feet to an
iron pipe; thence run North 89° 02' 24" West, 1301.23
feet to a steel rod for the point of beginning of the
property herein described; thence run South 00° 21' 30"
West, 1151.42 feet to a steel rod; thence run North 88°
43' 44" West, 335 feet to a steel rod; thence run North
01° 16' 16" East, 235 feet to a point; thence run North
88° 43' 44" West, 90.46 feet to a steel rod; thence run
North 01° 16' 16" East, 155.00 feet; thence run North 28°
13' 12" East, 73.18 feet to a steel rod; thence run North
00° 23' 30" East, 519.03 feet to a point; thence run
North 89° 02' 24" West, 13.82 feet to a steel rod; thence
run North 00° 57' 36" East, 175.00 feet to a steel rod;
thence run South 89° 02' 24" East, 397.00 feet to the
point of beginning, containing 9.84 acres, more or less.

MIS 0075 PAGE 1711

And which property also contains the following:

Lots One (1) through Eighteen (18), inclusive, Unit One,
Caney Creek Estates, as recorded on Slide No. 1405-A in
the Office of the Judge of Probate of Baldwin County,
Alabama, together with all common facilities and
amenities situated within Unit One thereof.

NOW THEREFORE, Declarant hereby declares that all of the
properties described above shall be held, sold and conveyed subject

to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to Caney Creek Estates Property Owners Association, Inc., its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, which constitutes Unit One of Caney Creek Estates, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the owners. The Common Area to be owned by the Association may be enjoyed from time to time if, in the discretion of the Declarant, an addition to the Common Areas is

warranted due to the addition of future units within the development.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area. A Lot may exist either in Unit One or in future units.

Section 6. "Declarant" shall mean and refer to Caney Creek Estates, Inc., its successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot or additional land from Declarant for the purpose of development.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

MSF 0075 PAGE 1713

(c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes as may be allowed by law and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds of each class of members has been recorded.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be mandatory and shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be

exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) when the total collective votes outstanding in the Class 'A' membership in all units equal the total collective votes outstanding in the Class B membership in all units, or
- (b) on January 1, 2004.

In the event future units are constructed by Declarant, its successors or assigns, after the conversion of Class B memberships in any previous unit, the total number of all lots within the project shall be used to determine collective voting rights of Class A and Class B members, and if the creation of future units vests a majority of votes in the Class B member, such Class B membership shall be reconstituted and voting rights of all members shall be as set forth in this Article.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal
Obligation for Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so

expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall pass to the successors in title in any Lot whether or not expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area.

Section 3. Maximum Monthly Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum monthly assessment shall be Fifteen Dollars (\$15.00) per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than 5% above

the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above 5% by a vote of two-thirds ($2\frac{2}{3}$) of all members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds ($2\frac{2}{3}$) of the votes of all members who are voting in person or by proxy at a meeting duly called for this purpose.

MISC 0075 PAGE 1717

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of all members shall

constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis or at such other times as established by the Association.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of each month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of said annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

MISC 0075 PAGE 1719

Section 8. Effect of Nonpayment of Assessments:

Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of six percent (6%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages.

The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V

ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an

architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and compliance with this Article will be deemed to have occurred.

ARTICLE VI

CONDITIONS AND RESTRICTIONS ON USE OF PROPERTY

The following restrictions shall apply to the use and occupancy of each Lot lying within Unit One of Caney Creek Estates:

1. Each Lot shall be limited to single family residential purposes, and each Lot shall be restricted to one residence.

2. Other than for temporary purposes directly related to the construction of a single family residence, no single-wide trailers or single-wide mobile homes of any type shall be permitted.

3. No single Lot within Unit One of the subdivision may be resubdivided. However, two or more Lots may be combined and resubdivided so long as none of the Lots are reduced to a size smaller than the size of the original Lots as shown on the initial plat of Unit One of said subdivision.

4. All Lots shall have a minimum setback from the front street of thirty-five (35) feet, from the side lot lines of ten

(10) feet and from the rear lines of thirty (30) feet. Corner lots shall have a thirty foot front yard minimum setback and the side contiguous to the street shall have a fifteen foot minimum setback.

5. Any alteration to the improvements on the Lot or any additional placement of fences or out buildings shall be approved or denied by the Rules Committee upon submittal of a written request showing the location, type of materials to be used and the name of the person or persons who will be making the improvements.

6. No dogs, cats or other animals or pets shall be kept or bred for commercial purposes, nor shall any animal be allowed to roam outside the confines of the owner's specific Lot. A warning shall be issued if any pet or animal becomes a nuisance, and if the problem persists beyond a warning, the animal shall be removed from the premises.

7. No commercial trade or activity shall be permitted to operate on any Lot within Unit One of the subdivision without the express written permission from the Rules Committee. No automobile repair nor any other unsightly activity shall be permitted to remain on any Lot beyond a reasonable period of time. No satellite dish may be erected or installed upon any lot without the prior written permission of the Rules Committee, and then only upon such terms and conditions as the Rules Committee may prescribe. The location of any structure not essential to the operation of the home must first be approved by the Rules Committee as to location and maintenance.

8. If for any reason a home should be damaged by fire or other natural disaster, the remaining structure shall be promptly repaired or removed from the Lot within a reasonable period of time.

9. All guests and visitors shall be subject to these rules and regulations.

10. Cars shall not be parked for extended times in the street, nor shall bicycles, toys, etc. be stored in view of the street.

11. No firearms may be discharged within the subdivision, and no hunting by Caney Creek Estates residents will be permitted on adjoining lands without written permission from the landowner.

12. A monthly fee of not less than Five Dollars (\$5.00) and not more than Fifteen Dollars (\$15.00) per Lot shall be charged for the upkeep and maintenance of the Common Areas, street, street lights and drainage. Upon demand for annual payment, any failure to remit payment in full within thirty days, may result in a late fee not to exceed five percent (5%) of the assessment then due.

13. No boats, cars, motorcycles, utility trailers, bicycles, garbage cans, etc. shall be placed on the Lots so as to be unsightly from the street. No automobile repair shall be conducted on any Lot.

14. No Lot owner shall permit any person or persons to reside in a camper or motorhome on his or her Lot for more than seven days without written permission from the Rules Committee.

ARTICLE VII

RULES COMMITTEE

For all of the rules and regulations set out in Article VI hereof, a Rules Committee will be formed of not more than five persons who will serve to interpret and enforce these rules and regulations. The Declarant shall serve as the initial committee and shall remain until such time as it sees fit, or until eighty percent (80%) of the Lots in the entire development, including future units, are sold. The power of the Rules Committee shall include, but shall not be limited to, the interpretation of the rules set forth above, the granting of variances, the approval of alterations to homes, the construction of out buildings and fences, landscaping and overall maintenance of the neighborhood. Any decision by the Rules Committee shall be final, except that anyone wishing to appeal a decision of the committee shall be entitled to submit their appeal in writing to the Rules Committee and to every other owner in the development. Upon an affirmative vote of eighty percent (80%) of the owners of record in the subdivision, each Lot having one vote, a decision by the Rules Committee may be overturned. It is the responsibility of the person or persons making the appeal to draw and distribute a ballot to all the owners of record for their vote and to direct those owners to return their ballots to the Rules Committee. The principal address of the Rules Committee initially shall be Post Office Box 886, Spanish Fort, Alabama 36527 c/o Caney Creek Property Owners Association, Inc.

ARTICLE VIII

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by the owners of not less than eighty percent (80%) of the Lots in said subdivision, and thereafter by an instrument signed by the owners of not less than seventy-five percent (75%) of the Lots in said subdivision. Any amendment must be recorded.

Section 4. Annexation. Additional residential property and Common Area may be annexed to the Properties in the sole discretion of the Declarant, its successors and assigns.

Section 5. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 5th day of November, 1993.

CANEY CREEK ESTATES, INC.

By:

Larry E. Chason

LARRY E. CHASON

Its: President and Director

STATE OF ALABAMA

COUNTY OF BALDWIN

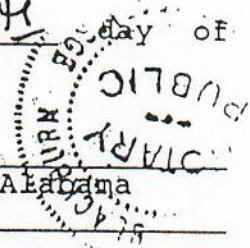
I, Daniel G. Blackburn, a Notary Public, in and for said County and in said State, hereby certify that Larry E. Chason, whose name as President and Director of CANEY CREEK ESTATES, INC., is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, acting in his capacity as such officer and director and with full authority, executed the same voluntarily on the day the same bears date, as and for the act of said corporation.

Given under my hand and seal this 5th day of November, 1993.

Daniel G. Blackburn

Notary Public, Baldwin County, Alabama

My Commission Expires: 7-8-96



MISC 0075 PAGE 1725