

AMENDMENT
OF
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS
FOR SUMMER OAKS, A TOWNHOME SUBDIVISION

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MISC. 60-486 839

STATE OF ALABAMA,
BALDWIN COUNTY

I certify that this instrument was filed on

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and that no tax was collected. Recorded in *Misc.*
Book *88-89*
Page *100-937* Judge of Probate
D.P. *100* Index *87*

AMENDMENT
OF
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS
FOR SUMMER OAKS, A TOWNHOME SUBDIVISION

THIS AMENDED DECLARATION, made on the date hereinafter set forth by TONSMEIRE DEVELOPMENT CORPORATION, an Alabama corporation, hereinafter referred to as "Declarant". This Amended Declaration is being joined in by SUMMER OAKS PROPERTY OWNERS ASSOCIATION, INC., and the undersigned lot owners (being a majority of the lot owners in SUMMER OAKS, a Townhome Subdivision) and the undersigned mortgagees (being all of the mortgagees holding a mortgage comprising a first lien upon any unit in SUMMER OAKS, a Townhome Subdivision).

MISC. BOOK 900

RECITALS:

(1) Declarant filed for record a plat of Phase I of SUMMER OAKS, a Townhome Subdivision, in Map Book 12, Page 78 which plat was rerecorded in Map Book 12, Page 127 and Declarant filed for record a plat of Phase II and Phase III and Phase IV of SUMMER OAKS, a Townhome Subdivision, in Slide 1095-A and Slide 1109-A and Slide 1130-A, respectively, (herein collectively referred to as SUMMER OAKS).

(2) Declarant did file for record a document entitled "Declaration of Covenants, Conditions, Restrictions and Easements for Summer Oaks, a Townhome Subdivision" which is recorded in Miscellaneous Book 51, Pages 1680-1715 which was amended by instrument recorded in Miscellaneous Book 54, Page 989-993 (herein referred to as the "Original Declaration").

(3) Declarant did file for record documents entitled "Supplementary Declaration of Covenants and Restrictions for SUMMER OAKS, a Townhome Subdivision" which are recorded in Miscellaneous Book 56, Page 380, Miscellaneous Book 58, Page 521, and Miscellaneous Book 59, Page 977, which Supplementary Declarations were filed for the purpose of submitting Phase II, Phase III and Phase IV to the terms and conditions of the Original Declaration.

(4) Declarant, SUMMER OAKS PROPERTY OWNERS ASSOCIATION, INC., the undersigned lot owners and the undersigned Mortgagees, desire to amend the Original Declaration by substituting in its stead this Amendment.

The recording references herein refer to the office of the Judge of Probate, Baldwin County, Alabama.

NOW, THEREFORE, Declarant, SUMMER OAKS PROPERTY OWNERS ASSOCIATION, INC., and the undersigned lot owners and mortgagees hereby declare that all the properties described on the plat of SUMMER OAKS Phase I, Phase II, Phase III, and Phase IV, shall be held, sold, and conveyed to the following easements, restrictions, covenants, 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 a right, title or interest in SUMMER OAKS 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 SUMMER OAKS PROPERTY OWNERS ASSOCIATION, INC., an Alabama non-profit corporation, its successors and assigns.

Section 2: "Board of Directors" shall mean and refer to the Board of Directors of the Association.

Section 3: "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners.

Section 4: "Declarant" shall mean and refer to TONSMEIRE DEVELOPMENT CORPORATION, its successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 5: "Declaration" shall mean and refer to this Amended Declaration.

Section 6: "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.

Section 7: "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 8: "Properties" or "Planned Unit Development" shall mean and refer to SUMMER OAKS, a Townhome Subdivision, Phase I, Phase II and Phase III, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION:

ADDITIONS THERETO

Section 1: Existing Property. The real property which is, and shall be, held, transferred, sold, conveyed, leased, and occupied, subject to this Declaration, is located in Baldwin County, Alabama and is referred to as SUMMER OAKS, recorded in the office of the Judge of Probate

MISC. 60 AGE 902

SUMMER OAKS, recorded in the office of the Judge of Probate of Baldwin County, Alabama, and is herein referred to as the "Existing Property".

Section 2: Additions to Existing Property. Lands in addition to the Existing Property described above may hereafter become subject to this Declaration in the following manner:

(a) Additions in Accordance with General Plan of Development. The Declarant, its successors and assigns, shall have the right, at its sole discretion and without the further consent of the Association, to bring within the scheme and operation of this Declaration, additional property; provided, however, that such additions shall be limited to lands which are contiguous to those above described, and which additional lands are to be developed as part of the Planned Unit Development known as SUMMER OAKS, a Townhome Subdivision, subject to the covenants and restrictions herein set forth. Such additional Properties shall be deemed to be "Contiguous" even though separated from the Existing Property by streets, roads, highways, rivers, streams, rights-of-way, railroads, utilities, or other intervening physical features or property interests not inconsistent with the general contiguity of the lands in question. Such additions shall be developed in a manner consistent with a general plan of development of the Existing Property prepared prior to the sale of any Lot and made known to every purchaser (which may be done by brochure or site plan made available to the purchaser) prior to such sale.

The General Plan of Development shall show the Existing Property, and contain (1) a general indication of the size,

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location and proposed land use of each development stage; (2) the approximate size and location of common Properties proposed; (3) the general nature of any proposed common facilities and improvements; (4) a statement that any additions to the Existing Properties, will become subject to assessment for their just share of the Association's expenses; and (5) an approximate schedule, based upon the Declarant's projections, indicating the estimated times the Declarant plans to complete the various stages of the development. Unless otherwise stated herein, the General Plan of Development shall not bind the Declarant, its successors and assigns, to adhere to the Plan in any subsequent development of the land shown thereon and the General Plan shall contain a conspicuous statement to such effect. It also shall be understood that the Declarant shall be free to develop such portions or sections of the lands depicted in the General Plan of Development, as in the reasonable exercise of its discretion, it deems in the best interest of the entire development, without regard to the relative location of such portions or sections within the overall plan; that it shall not be required to follow any predetermined sequence or order of improvement and development; and that it may bring within the scheme of this Declaration additional lands, and develop the same before completing the development of the Existing Property.

The additions authorized under this and the succeeding subsection, shall be made by filing of record in the office of the Judge of Probate of Baldwin County, Alabama, a Supplementary Declaration of Covenants and Restrictions with respect to such additional property which shall extend the

W.S.T. 60 AGE 904

operation and effect of the Covenants and Restrictions of this Declaration to such additional property.

The Supplementary Declaration may contain such complementary additions and modifications of the Covenants and Restrictions contained in this Declaration as may be necessary or convenient, in the judgment of the Declarant, to reflect and adapt to any difference in character of the added Properties, and as are not inconsistent with the scheme of this Declaration. In no event, however, shall such Supplementary Declaration revoke, modify, or add to the covenants established by this Declaration so as to affect the Existing Property. The Declarant shall not be obligated to develop additional lands as provided for herein. The discretion to develop future lands shall be solely with the Developer.

(b) Other Additions. Upon approval in writing of the Association, pursuant to authorization of two-thirds (2/3rds) of the vote of all of its members, voting as provided for herein, the Owner of any property who desires to add such property to the scheme of this Declaration and subject such property to the jurisdiction of the Association, may file of record a Supplementary Declaration of Covenants and Restrictions as described in subsection (a) above.

(c) Mergers, Combinations or Consolidations. Upon merger, combination or consolidation of the Association with another association, the Properties, rights and obligations of the Association, may, by operation of law, be transferred to another surviving or consolidated association, or, in the alternative, the Properties, rights and obligations of another association may, by operation of law, be added to

MSL 60 JUE 905

the Properties of the Association as a surviving corporation pursuant to a merger, combination or consolidation. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Existing Property, together with the covenants and restrictions established upon any other Properties as one scheme. No such merger, combination or consolidation, however, shall affect any revocation or change of, or addition to the covenants and restrictions established by this Declaration within the Existing Property, except as herein provided.

ARTICLE III

PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every

Owner shall have and is hereby granted a right and easement of ingress, egress, use and 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 an initial admission fee and other fees for the maintenance of the Common Area.

(b) The parking of automobiles in the designated area within the Common Area is restricted to Owners and guests, invitees and tenants of Owners, and shall not interfere with the rights of ingress and egress of the Owner of any particular Lot.

(c) The right of the Association, in addition to its other rights as hereinafter set forth, to suspend the voting rights and the right to use of the Common Area by an Owner for any period during which any assessment against his Lot

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remains unpaid; and for a period not to exceed sixty (60) days from any infraction of its published rules and regulations after hearing by the Board of Directors of the Association.

(d) 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 and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3rds) of the members to such dedication or transfer has been recorded.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment of the Common Area to the members of his family, his tenants and guests, or contract purchasers who reside on the property, provided, however, that the owner or contract purchaser who resides on the property, as the case may be, shall accompany family, tenants and guests to use the common area.

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ARTICLE IV

EASEMENTS

Section 1. Easements for Utilities. Declarant reserves the right to grant easements, both temporary and permanent, to all public authorities and utility companies over any part of the Common Area described herein.

Section 2. Easements for Encroachments. Each Lot, and the property included in the Common Area, shall be subject to an easement for encroachments created by construction, settling, patios, balconies, stair landings and overhangs for all buildings constructed by Declarant. A

valid easement for said encroachments and for the maintenance of same, so long as such encroachments stand, shall and does exist. In the event that any structure containing two or more units is partially or totally destroyed and then rebuilt, the Owners of the units so affected agree that minor encroachments of parts of the adjacent units on Common Areas due to construction shall be permitted, and that a valid easement for said encroachment and the maintenance thereof shall exist.

Section 3. Other Easements. There is hereby created a blanket easement upon, across, over and under all of the Properties for ingress, egress, installation, replacement, repair and maintenance of all utilities, including, but not limited to, water, sewers, gas, telephones, and electricity, and a master television antenna system. By virtue of this easement, it shall be expressly permissible to erect and maintain the necessary poles and other equipment on the property and to affix and maintain electrical or telephone wires and conduits, sewer and water lines, above, on or below any residence or land of any Owner. An easement is hereby granted to the Association, its officers, agents and employees, including employees of any management company having a contract with the Association, over all of the common areas and to enter any residence to perform the duties of maintenance and repair of the residences or Common Areas; to maintain any utilities for which an easement has been granted and to prevent damage to any other residence. An easement is hereby reserved to Declarant to enter the Common Area during the period of construction and sale of the Properties, or any additions to the Properties, and to maintain such facilities and perform

MISC. 60 AGE 908

such operations as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the Declarants operation, including, without limitation, to the construction and sale of residences, to maintain a business office, storage area, construction yards, signs and model units.

Section 4. Reciprocal Easements. There is hereby granted reciprocal pertinent easements for the maintenance and repair of any and all party walls. An easement is hereby granted to all fire protection, ambulance and other similar persons and agencies, to enter upon the private streets and parking areas in the performance of their duties. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, communication lines or other utilities may be installed or relocated on said Properties except as initially specified, planned and approved by the Declarant or thereafter approved by the Declarant or the Association's Board of Directors.

- The easements provided for in this Article shall in no way affect any other recorded easements on said premises.

ARTICLE V

PARTY WALL

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the Lots shall constitute a Party Wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding Party Walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

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Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a Party Wall shall be shared equally by the Lot Owners of the property upon which the Party Wall is situated; provided that, should a Party Wall be damaged by the negligent or intentional act of any Owner or any member of his family or his tenant or guest, then all such repair costs shall be borne by such Owner.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability or negligence or willful acts or omissions.

Section 4. Water Proofing. Notwithstanding any other provision of this Article, an Owner, who by his negligent or willful act causes the Party Wall to be exposed to the elements, shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute concerning a Party Wall, or under the provisions of this Article, each party shall choose one arbitrator and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

REC. 60 JCE 910

ARTICLE VI

MEMBERSHIP AND VOTING RIGHTS

Section 1. The Association. The operation and administration of the Planned Unit Development shall be by the Association of Lot Owners. The Association shall be a not-for-profit Alabama corporation incorporated by Articles of Incorporation recorded in the office of the Judge of Probate of Baldwin County, Alabama. The Association shall be an entity which shall have the capability of bringing suit and being sued with respect to the exercise or nonexercise of its powers. The Association shall have exclusive authority and power to maintain a class action and to settle a cause of action on behalf of Lot Owners of the Planned Unit Development with reference to the common elements and with reference to any and all other matters in which all of the Lot Owners have a common interest. The Association shall have all the powers and duties granted to or imposed on it under the By-Laws and other Planned Unit Development documents as they may be amended from time to time. The Association is specifically authorized to enter into agreements by which its powers and duties, or some of them, may be exercised or performed by some other person or persons. The Association shall have a reasonable right of entry upon any Lot to make emergency repairs and to do other work reasonably necessary for the proper maintenance and operation of the Planned Unit Development and further, shall have the right to grant permits, licenses and easements over, under and within the Common Areas for utilities, roads, and other purposes reasonably necessary or useful for the proper maintenance or operation of the development. The

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Board shall have the authority and duty to levy and enforce the collection of general and specific assessments for common expenses, capital improvements and reserves and is further authorized to provide adequate remedies for failure to pay such assessments.

Section 2. Membership. Each Lot Owner shall be a member of the Association so long as he is a Lot Owner. A Lot Owner's membership shall immediately terminate when he ceases to be a Lot Owner. The membership of a Lot Owner cannot be assigned or transferred in any manner except as an appurtenance to his Lot.

Section 3. Voting. Each Lot Owner shall be entitled to one (1) vote, which vote is not divisible. The vote shall be cast by the Lot Owner in the manner provided for herein and in the By-Laws. Provided, however, that until four (4) months after the Declarant has completed and sold 75% of the lots in all phases of the Planned Unit Development, or until five (5) years from the date the first Lot is sold, or until the Declarant elects to terminate its control of the Planned Unit Development, whichever shall first occur, the By-Laws and rules adopted by the Declarant shall govern and there shall be no meeting of the members of the Association, unless a meeting is called by the Board of Directors of the Association, and neither the Lot Owners nor the Association, nor the use of the Planned Unit Development property by Lot occupants shall interfere with the completion of the contemplated improvements and the sale of the Lots. The Declarant may make such use of the unsold Lots and the Common Areas and facilities as may facilitate such completion and sale, including, but not limited to, showing of the property and the display of signs.

MSC 60 OF 912

Thereafter, the Lot Owners shall have control of the Association.

Section 4. Contracts. The Association shall not be bound, either directly or indirectly, to professional management contracts or leases entered into prior to passage of control unless there is a right of termination of any such contract or lease, without cause, which is exercisable without penalty at any time after transfer of control, with not more than 90 days notice to the other party.

Section 5. Assignment. The share of a member and the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to his Lot.

Section 6. Board of Directors. The affairs of the Association shall be conducted by a Board of Directors which shall consist of such number not less than three (3) nor more than seven (7) as shall, from time to time, be determined and fixed by a majority of the voting rights present at any annual meeting of the members.

Section 7. By-Laws. The Association and its members shall be governed by the By-Laws which shall be adopted by the members.

Section 8. Availability of Records. The Association shall make available to Lot Owners, prospective purchasers, first mortgagees and insurers of first mortgagees of any Lot, current copies of the Declaration of Covenants, Conditions and Restrictions, By-Laws, Rules and Regulations and other books, records, financial statements and the most recent annual audited financial statement of the Association, if such audited financial statement is prepared. "Available" shall mean available for inspection

REC. 60 40E 913

upon request, during normal business hours or under reasonable circumstances. If the Planned Unit Development Property contains 50 Lots or more, any holder of a first mortgage is entitled upon request, to a financial statement for the immediately preceding fiscal year.

Section 9. Reserve Fund. The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of improvements to the Common Areas. The fund shall be maintained out of regular assessments for common expenses.

ARTICLE VII

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of 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 to the Common Area, 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

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delinquent assessments shall not pass to successors in title unless expressly assumed by them.

Section 2. Special Assessments for Capital Improvements Upon Common Area. In addition to the annual assessments authorized above, the Association may levy, in any assessment year⁴, 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 (2/3rds) of the votes of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 3. Uniform Rate of Assessment. The assessments herein described shall be fixed at a uniform rate for all Lots.

Section 4. 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 the month following the issuance of a certificate of occupancy for the house constructed on said Lot. 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 the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors, and one-twelfth (1/12th) of any annual maintenance or other special assessment shall be due each

REC. 60-AGE 315

month. 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.

Section 5. 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 date at the rate paid on six (6) month treasury bills plus three percent (3%). The Association may bring an action at law or in equity against the Owner personally obligated to pay the same, foreclose a lien against the property or seek injunctive relief, and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. Each such Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Association the right and power to bring all actions against such Owner personally for the collection of each charge as a debt and to foreclose the aforesaid lien by all methods available for the enforcement of such liens, including foreclosures by an action brought in the name of the Association in a like manner as a mortgage lien on real property, and such Owner hereby expressly grants to the Association a power of sale in connection with said lien. The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all Lot Owners. The Association, acting on behalf of the Lot Owners shall have the power to bid for an interest foreclosed at foreclosure sale and to acquire

WISC. 60.01E 916

and hold, lease, mortgage and convey the same. 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 6. 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. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof or relieve the prior Owner from any personal liability for any unpaid assessments occurring prior to said sale or transfer.

MSC. 60.156 917

ARTICLE VIII

RESTRICTIONS UPON USE, STRUCTURAL

AND ARCHITECTURAL CHANGE

No Owner, tenant or other occupant of the Properties herein described shall, without the prior written consent of the Board of Directors:

(a) Paint or otherwise change the appearance of any exterior wall, door, window, terrace, balcony or any exterior surface; enclose any terrace or balcony with screen, glass or other material; erect any exterior lights or signs; place any signs in windows; erect or attach any structures or fixtures to the Common Area; nor make any structural additions or alterations (except the erection or

removal of nonsupport carrying interior partitions wholly within the unit) to any unit or to the Common Area. Any Owner who wishes to accomplish any of the foregoing shall make such request in writing to the Board of Directors together with, if necessary, one (1) copy of the plans and specifications for the work proposed by the Owner. In the event the Board of Directors shall fail to approve or disapprove such request by an Owner within sixty (60) days from the submission of same to the Board of Directors or of its designated representative, such approval will not be required and this covenant shall be deemed to have been fully complied with; and, nothing herein contained shall prevent, or is intended to prevent, an Owner from maintaining or making repairs to his Lot so as to maintain his Lot in the condition existing at the time of purchase;

(b) Permit loud and objectional noises or obnoxious odors to emanate from the Lot or from vehicles which may cause a nuisance to the occupants of other Lots;

(c) Make any use of a Lot which violates any laws, ordinances or regulation of any governmental body or governmental agency;

(d) Fail to conform to and abide by the By-Laws and the uniform rules and regulations in regard to the use of the Common Area which may be adopted from time to time by the Board of Directors of the Association;

(e) Erect, construct or maintain any wire, radio, television or other type antennas, garbage or refuse receptacles, or other equipment or structures on the exterior of the building or on the Common Area, except with the written consent of the Board of Directors;

(f) Permit or suffer anything to be done or kept on _____ the Properties which will increase insurance rates on any unit;

(g) Commit or permit any nuisance, upon the Properties herein described;

(h) Divide or subdivide a Lot into a smaller Lot or Lots so as to create a Lot smaller in size than that shown by plat of the subdivision; provided, however, that an entire Lot may be combined with an entire adjacent Lot and occupied as one Lot;

(i) Obstruct the common way of ingress and egress to the other Lots or to the Common Area;

(j) Place or allow anything to remain in or on the Common Area which would be unsightly or hazardous including unsightly vehicles or any vehicles other than normal passenger autos;

(k) Allow any rubbish, refuse, garbage or trash to accumulate in places other than the receptacles provided therefor; and each Lot and the Common Area shall at all times be kept in a clean and sanitary condition. Garbage shall be placed in waterproof bags or similar containers before being placed in the appropriate receptacles;

(l) Allow any fire or health hazard to exist;

(m) Make use of the Common Area in such a manner as to abridge the equal rights of the other Owners to the use and enjoyment of same;

(n) Permit a boat or boat trailer to be kept or maintained on the parking spaces or permit said parking spaces to be used for the storage of campers, motor homes or any other vehicle, apparatus or equipment (excluding

REC. 60 919

passenger vehicles) without the written approval of the Board of Directors;

(o) Use the Lot for anything other than for residential purposes; said Properties are hereby restricted to residential dwellings for residential use only.

(p) No Owner of a Lot shall repair any motor vehicle, boat or other vehicle upon any portion of any Lot except for emergency repairs thereto and then only to the extent necessary to enable movement thereof to a proper repair facility;

(q) Raise, breed or keep animals, livestock or poultry of any kind on any Lot except that dogs, cats and other household pets may be kept, subject to rules and regulations adopted by the Association, provided that they are not kept, bred or maintained for any commercial purpose;

(r) Erect outbuildings or storage buildings of any kind upon the Properties;

(s) Cut or otherwise destroy any growing tree without the approval of the Board of Directors unless that growing tree becomes a hazard to personal property;

(t) No action shall at any time be taken by the Association or its Board of Directors which in any manner would discriminate against any Owner or Owners in favor of the other Owners.

ARTICLE IX

MAINTENANCE AND REPAIR

Section 1. Obligation of Owner. Each Owner shall, at his expense, maintain and repair his Lot keeping the same at all times in good condition and making such structural repairs as may be required.

RSL 60:06 920

Section 2. Failure to Maintain. In the event an Owner of any Lot in the Properties shall fail to maintain the premises and improvements situated thereon as required herein, in a manner satisfactory to the Board of Directors, the Association, after approval by two-thirds (2/3rds) vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon said parcel and to repair, maintain and restore the Lot and the buildings and any other improvements erected thereon. The cost of the same shall be added to and become a part of the assessment to which such Lot is subject.

Section 3. Acts of Owner. An Owner shall do no act nor any work that will impair the structural soundness or integrity of another living Lot or impair any easement or hereditament nor any act nor allow any condition to exist which will adversely affect any other living Lot or its Owner.

W.C.T. 60 JGE 921

ARTICLE X

INSURANCE

Each Lot Owner shall and is hereby deemed responsible for maintaining sufficient insurance upon his or her Lot so as to provide full replacement value thereof in the event of a casualty, including, without limitation: (a) loss or damage by fire and other hazards covered by a standard extended coverage endorsement; (b) such other risks as from time to time shall be customarily covered with respect to buildings similar in construction, location and use as the buildings on the land including, but not limited to, vandalism, malicious mischief and windstorm; and (c) flood insurance, if it can be obtained. Each Lot Owner shall

provide the Association with evidence that such insurance is in full force and effect. In the event an Owner of any Lot in the Properties shall fail to maintain sufficient insurance as provided for herein, the Association, after approval by two-thirds (2/3rds) of the Board of Directors, shall have the right to purchase said insurance, the cost of which shall become the personal obligation of the Lot Owner and a lien on the Lot.

ARTICLE XI

RECONSTRUCTION OR REPAIR AFTER CASUALTY

In the event of the damage or destruction of all or part of the improvements on a Lot, the Lot Owner shall be responsible for the prompt reconstruction and repair of the improvements after such casualty; provided that should the Lot Owner fail to repair or replace the improvements within a reasonable period, the Association may do so for his account and may assess his property accordingly; and thereafter be subrogated to any insurance proceeds.

REC. 60-100 922

ARTICLE XII

AMENDMENT

This Declaration shall be amended in the following manner:

Section 1. Notice. Notice of the subject matter of the proposed amendment shall be included in the notice of any meeting of the Association at which a proposed amendment is to be considered.

Section 2. Resolution. An amendment may be proposed by either a majority of the Board of Directors or by members holding one-third (1/3rd) of the votes of the

Association. A resolution adopting a proposed amendment must be adopted by an affirmative vote of not less than a majority of the Board of Directors and the consent of the Owners of the Lots to which sixty-seven percent (67%) of the votes in the Association are allocated and the approval of fifty-one percent (51%) of the holders of first mortgages on Lots. Provided, however, that until the Declarant of the Planned Unit Development has completed and sold seventy-five percent (75%) of the Lots in all phases of the Planned Unit Development, or until five (5) years from the date the first Lot is sold, or until the Declarant elects to terminate its control of the Lot, whichever shall first occur, no amendment may be made unless the Declarant shall join in the execution of such amendment, nor shall any amendment make any change that would in any way affect the rights, privileges, or powers of the Declarant unless the Declarant shall join in the execution thereof.

Section 3. Recording. A copy of each amendment shall be certified by the President and Secretary of the Association as having been duly adopted and shall be effective when recorded in the office of the Judge of Probate of Baldwin County, Alabama.

Section 4. Agreement. In the alternative, an amendment may be made by an agreement signed and acknowledged by all record Owners, including all first mortgagees of Lots in the Planned Unit Development in the manner required for the execution of a deed, and such amendment shall be effective when recorded in the office of the Judge of Probate of Baldwin County, Alabama.

If any provision or provisions of this Declaration, or any section, sentence, clause, phrase or word herein, or the

MISC. 60:06 923

application thereof, is in any circumstances held invalid, the validity of the remainder of this Declaration and the application thereof shall not be affected thereby.

ARTICLE XIII

MISCELLANEOUS

Section 1. Unrestrictive Right of Transfer. The right of a Lot Owner to sell, transfer, or otherwise convey his Lot shall not be subject to any right of first refusal or a similar restriction.

Section 2. Lease of Units. Units may be leased by the Lot Owners; provided, however, that such lease and the rights of any tenants thereunder are hereby made expressly subject to the power of the Association to prescribe reasonable rules and regulations relating to the lease and rental of Lots and to enforce the same directly against such tenant or other occupant by the exercise of such remedies as the Board deems appropriate, including eviction.

Section 3. Restrictions on Mortgaging Lots.
Anything construed in any of the Planned Unit Development documents to the contrary, there shall be no restrictions on a Lot Owner's right to mortgage his Lot.

Section 4. Regulations. Reasonable regulations concerning the use of the Planned Unit Development property may be made by the Declarant and amended from time to time by the Board of Directors of the Association.

Section 5. Lender's Notices. Upon written request to the Owners Association, identifying the name and address of the holder, insurer or guarantor and the Lot number or address, any mortgage holder, insurer, or guarantor will be entitled to timely written notice of:

REC. 60 JUL 9 1964

(a) Any condemnation or casualty loss that affects either a material portion of the project or the Unit securing its mortgage.

(b) Any 60-day delinquency in the payment of Assessments or charges owed by the Owner of any Lot on which it holds the mortgage.

(c) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Owners Association.

(d) Any proposed action that requires the consent of a specified percentage of mortgage holders.

ARTICLE XIV

FHA/VA APPROVAL

As long as the Declarant retains control of the Association as provided for herein, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of addition properties, dedication of common area, amendment of this Declaration of Covenants and Restrictions.

IN WITNESS WHEREOF, the said TONSMEIRE DEVELOPMENT CORPORATION, an Alabama corporation, has caused this Declaration to be executed on its behalf on this the 27th day of January, 1986.

TONSMEIRE DEVELOPMENT CORPORATION,
an Alabama Corporation

By:

Its: VP

ATTEST:

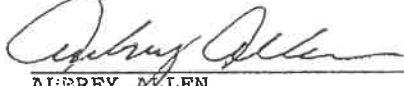
By:

Its: Asst Secretary

The undersigned being all of the Directors of SUMMER OAKS PROPERTY OWNERS ASSOCIATION, INC. hereby join in the execution of this Amended Declaration for the purpose of consenting thereto.


ARTHUR TONSMIRE, III,
Director


CAROL ANN MERRELL,
Director


AUBREY ALLEN,
Director

We the undersigned being the President and Secretary of SUMMER OAKS PROPERTY OWNERS ASSOCIATION, INC. do hereby certify that this Amendment of Declaration of Covenants, Conditions and Restrictions for SUMMER OAKS, a Townhome Subdivision, was duly adopted by the Board of Directors of SUMMER OAKS PROPERTY OWNERS ASSOCIATION, INC.

By: 
Its: President

By: 
Its: Secretary

The undersigned being more than seventy percent (70%) of the lot owners in SUMMER OAKS hereby join in the execution of this Amended Declaration for the purpose of consenting thereto.

TONSMIRE DEVELOPMENT CORPORATION

By: 
Its: 
Owner of Lot 7, Phase I; Lots 15, 16 and 24, Phase II; Lots 31, 34 and 35, Phase III; and Lots 37, 38 and 40, Phase IV

Owner of Lot _____, Phase _____

MSL 60-40E 923

Owner of Lot _____, Phase _____

Owner of Lot _____, Phase _____

Owner of Lot _____, Phase _____

Sharon R. Randis
Owner of Lot 7, Phase I

Owner of Lot _____, Phase _____

Theresa Schmitt
Owner of Lot 9, Phase II

Robert A. Schmitt
Owner of Lot 10, Phase I

Julia M. Stapleton
Owner of Lot 11, Phase I

Julia M. Connor
Owner of Lot 20, Phase II

R. W. Baker
Owner of Lot 14, Phase II

Owner of Lot _____, Phase _____

Owner of Lot _____, Phase _____

Owner of Lot _____, Phase _____

MISC. 60-456 927

The undersigned being all of the mortgagees holding a first mortgage on any unit within SUMMER OAKS hereby join in the execution of this Amended Declaration in counterparts for the purpose of consenting thereto.

COLONIAL MORTGAGE COMPANY,
a Corporation

By: _____
Its: _____

FIRST SOUTHERN FEDERAL SAVINGS
AND LOAN ASSOCIATION,
a Corporation

By: *M. J. Ramsi*
Its: *Vice President*

CITY FEDERAL SAVINGS AND LOAN
ASSOCIATION,
a Corporation

By: _____
Its: _____

CENTRAL BANK OF THE SOUTH,
a Corporation

By: _____
Its: _____

BIRMINGHAM FEDERAL SAVINGS AND
LOAN ASSOCIATION,
a Corporation

By: _____
BEN C. HENDRIX
Its: Vice-President

TROY & NICHOLS, INC.
a Corporation

By: _____
HARRY BOYD
Its: Executive Vice-President

AmSOUTH BANK, N.A.,
a Corporation

By: _____
Its: _____

MSL 60-405 928

STATE OF ALABAMA :

COUNTY OF BALDWIN :

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that A.C. Tonsmeire, III and Carol Ann Merrell, whose names as VP and Asst. Secretary, respectively, of TONSMEIRE DEVELOPMENT CORPORATION, an Alabama corporation, are signed to the foregoing instrument and who are known to me, acknowledged before me on this day that, being informed of the contents of the foregoing instrument, they, as such officers and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand and seal on this the 27th day of January, 1986.

Denise S. Weston
NOTARY PUBLIC
My Commission Expires: 10/6/87

STATE OF ALABAMA :

COUNTY OF BALDWIN :

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that A. C. TONSMEIRE, III, 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 executed the same voluntarily on the day the same bears date.

Given under my hand and seal on this the 27th day of January, 1986.

Denise S. Weston
NOTARY PUBLIC
My Commission Expires: 10/6/87

STATE OF ALABAMA :

COUNTY OF BALDWIN :

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that CAROL ANN MERRELL 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 executed the same voluntarily on the day the same bears date.

Given under my hand and seal on this the 27th day of January, 1986.

Denise S. Weston
NOTARY PUBLIC
My Commission Expires: 10/6/87

MSC. 60 AGE 929

STATE OF ALABAMA :

COUNTY OF BALDWIN :

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that AUBREY ALLEN 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 executed the same voluntarily on the day the same bears date.

Given under my hand and seal on this the 27th day of January, 1986.

Denise S. West
NOTARY PUBLIC

My Commission Expires: 10/6/87

STATE OF ALABAMA :

COUNTY OF BALDWIN :

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that _____, 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, _____ executed the same voluntarily on the day the same bears date.

Given under my hand and seal on this the _____ day of _____, 198____.

NOTARY PUBLIC

My Commission Expires: _____

STATE OF ALABAMA :

COUNTY OF BALDWIN :

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that _____, 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, _____ executed the same voluntarily on the day the same bears date.

Given under my hand and seal on this the _____ day of _____, 198____.

NOTARY PUBLIC

My Commission Expires: _____

REC. 60 AGE 930

STATE OF ALABAMA :

COUNTY OF BALDWIN :

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that _____, 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, _____ executed the same voluntarily on the day the same bears date.

Given under my hand and seal on this the _____ day of _____, 198_____.

NOTARY PUBLIC
My Commission Expires: _____

STATE OF ALABAMA :

COUNTY OF BALDWIN :

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that _____, 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, _____ executed the same voluntarily on the day the same bears date.

Given under my hand and seal on this the _____ day of _____, 198_____.

NOTARY PUBLIC
My Commission Expires: _____

STATE OF ALABAMA :

COUNTY OF BALDWIN :

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Florence C. Sanders, 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 executed the same voluntarily on the day the same bears date.

Given under my hand and seal on this the 14th day of January, 19886.

Denise S. Weston
NOTARY PUBLIC
My Commission Expires: 10/6/87

REC. 60 AGE 931

STATE OF ALABAMA :

COUNTY OF BALDWIN :

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that _____, 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, _____ executed the same voluntarily on the day the same bears date.

Given under my hand and seal on this the _____ day of _____, 198____.

NOTARY PUBLIC

My Commission Expires: _____

STATE OF ALABAMA :

COUNTY OF BALDWIN :

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Gregory Schmitt, 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 executed the same voluntarily on the day the same bears date.

Given under my hand and seal on this the 14th day of January, 1986.

NOTARY PUBLIC

My Commission Expires: 10/6/87

STATE OF ALABAMA :

COUNTY OF BALDWIN :

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Barbara Horton, 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 executed the same voluntarily on the day the same bears date.

Given under my hand and seal on this the 14th day of January, 1986.

NOTARY PUBLIC

My Commission Expires: 10/6/87

MSC. 60 JGE 932

STATE OF ALABAMA :

COUNTY OF BALDWIN :

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Jackie M. Stapleton, 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 executed the same voluntarily on the day the same bears date.

Given under my hand and seal on this the 14th day of January, 1986.

Denise S. West
NOTARY PUBLIC

My Commission Expires: 10/6/87

STATE OF ALABAMA :

COUNTY OF BALDWIN :

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that David & Julia M. Connor, 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, they executed the same voluntarily on the day the same bears date.

Given under my hand and seal on this the 27th day of January, 1986.

Denise S. West
NOTARY PUBLIC

My Commission Expires: 10/6/87

STATE OF ALABAMA :

COUNTY OF BALDWIN :

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that R. Michael Booker, 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 executed the same voluntarily on the day the same bears date.

Given under my hand and seal on this the 14th day of Feb, 1986.

W. Kenneth Ward
NOTARY PUBLIC

My Commission Expires: 8/13/89

REC. 60 AGE 933

STATE OF ALABAMA :

COUNTY OF BALDWIN :

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that _____, 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, _____ executed the same voluntarily on the day the same bears date.

Given under my hand and seal on this the _____ day of _____, 198__.

NOTARY PUBLIC
My Commission Expires:_____

STATE OF ALABAMA :

COUNTY OF BALDWIN :

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that _____, 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, _____ executed the same voluntarily on the day the same bears date.

Given under my hand and seal on this the _____ day of _____, 198__.

NOTARY PUBLIC
My Commission Expires:_____

STATE OF ALABAMA :

COUNTY OF BALDWIN :

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that _____, 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, _____ executed the same voluntarily on the day the same bears date.

Given under my hand and seal on this the _____ day of _____, 198__.

NOTARY PUBLIC
My Commission Expires:_____

REC. 60-402 934

STATE OF ALABAMA :

COUNTY OF _____ :

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that _____, whose name as _____, of COLONIAL MORTGAGE COMPANY, a corporation, 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 foregoing instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand and seal on this the _____ day of _____, 19____.

NOTARY PUBLIC
My Commission Expires: _____

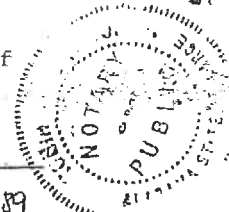
STATE OF ALABAMA :

COUNTY OF Mobile :

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that M. H. Raines, whose name as Vice President, of FIRST SOUTHERN FEDERAL SAVINGS AND LOAN ASSOCIATION, a corporation, 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 foregoing instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand and seal on this the 11th day of February, 1986.

Babin M. Lawson
NOTARY PUBLIC
My Commission Expires: 6-18-89



REC. 60-AGE 935

STATE OF _____ :

COUNTY OF _____ :

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that _____, whose name as _____, of CITY FEDERAL AND LOAN ASSOCIATION, a corporation, are signed to the foregoing instrument and who are known to me, acknowledged before me on this day that, being informed of the contents of the foregoing instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand and seal on this the ____ day of
____, 19__.

NOTARY PUBLIC

My Commission Expires: _____

STATE OF ALABAMA :

COUNTY OF _____ :

I, the undersigned authority, a Notary Public in and
for said County in said State, hereby certify that
_____, whose name as _____, of
CENTRAL BANK OF THE SOUTH, a corporation, are signed to the
foregoing instrument and who are known to me, acknowledged
before me on this day that, being informed of the contents
of the foregoing instrument, he, as such officer and with
full authority, executed the same voluntarily for and as the
act of said corporation on the day the same bears date.

Given under my hand and seal on this the ____ day of
____, 19__.

NOTARY PUBLIC

My Commission Expires: _____

STATE OF ALABAMA :

COUNTY OF _____ :

I, the undersigned authority, a Notary Public in and
for said County in said State, hereby certify that BEN C.
HENDRIX, whose name as Vice-President, of BIRMINGHAM FEDERAL
SAVINGS AND LOAN ASSOCIATION, a corporation, are signed to
the foregoing instrument and who are known to me, acknowledged
before me on this day that, being informed of the contents
of the foregoing instrument, he, as such
officer and with full authority, executed the same
voluntarily for and as the act of said corporation on the
day the same bears date.

Given under my hand and seal on this the ____ day of
____, 19__.

NOTARY PUBLIC

My Commission Expires: _____

STATE OF _____ :

PARISH OF _____ :

I, the undersigned authority, a Notary Public in and
for said County in said State, hereby certify that HARRY
BOYD, whose name as Executive Vice-President, of TROY &
NICHOLS, INC., a corporation, are signed to the foregoing
instrument and who are known to me, acknowledged before me
on this day that, being informed of the contents of the
foregoing instrument, he, as such officer and with full

MSC. 60-466 936

authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand and seal on this the ____ day of _____, 19__.

NOTARY PUBLIC

My Commission Expires: _____

STATE OF ALABAMA :

COUNTY OF _____ :

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that _____, whose name as _____, of AmSOUTH BANK, N.A., a corporation, are signed to the foregoing instrument and who are known to me, acknowledged before me on this day that, being informed of the contents of the foregoing instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand and seal on this the ____ day of _____, 19__.

NOTARY PUBLIC

My Commission Expires: _____

THIS INSTRUMENT WAS PREPARED BY:

Sam W. Irby
Attorney at Law
317 Magnolia Avenue
P. O. Box 1031
Fairhope, Alabama 36533

REC. 60-AGE 937

From the half section corner on the East Line of Section 7, Township 5 South, Range 2 East, run thence north 164 feet to an iron pipe; thence run West 35 feet to a pipe in the center of the North fork of Yancey Creek; thence continue West along a portion of the North line of the Village Subdivision as recorded in Map Book 10, Page 69 of the Baldwin County Probate Records, 1,721 feet to a concrete monument on the East right-of-way of U.S. Highway No. 98; thence run North $21^{\circ}-12'-07''$ West along said East right-of-way, 116.73 feet to the point of beginning; thence continue North $21^{\circ}-12'-07''$ West 48.27 feet to a point; thence run East 320.00 feet to a point; thence run North 200.00 feet to a point; thence run East 100.00 feet to a point; thence run South $19^{\circ}-39'-41''$ East 154.96 feet to a point; thence run East 200.00 feet to a point; thence run South 85.08 feet to a point; thence run West 200.00 feet to a point; thence run South 10.00 feet to a point; thence run West 454.68 feet to the point of beginning, containing 1.43 Acres.

NOT. 51-40E 1715

Given under my hand and seal on this the 7th day
November, 1984.

My Comm. Exp. 12, 1997

Christine S. Bessie
NOTARY PUBLIC

THIS INSTRUMENT PREPARED BY:

T. BRUCE MCGOWIN
Hand, Arendall, Bedsole,
Greaves & Johnston
Post Office Box 123
Mobile, Alabama 36601

NOT. 51-USE 1714

approved mortgagee, lending institution approved by the Authority, or the Authority itself which so acquires its title. Neither shall such provisions require the approval of a purchaser who acquired the title to a Unit at a duly advertised public sale with open bidding as may be provided by law, such as, but not limited to, execution sale, foreclosure sale, judicial sale or tax sale.

ARTICLE XVI

SEVERABILITY

If any provision or provisions of this Declaration, or any section, sentence, clause, phrase or word herein, or the application thereof, is in any circumstance held invalid, the validity of the remainder of this Declaration and the application thereof shall not be affected thereby.

IN WITNESS WHEREOF, the said TONSMEIRE DEVELOPMENT CORPORATION, an Alabama corporation, has caused this Declaration to be executed on its behalf on this the 7th day of December, 1984.

TONSMEIRE DEVELOPMENT CORPORATION

By: A. C. Tonsmeire III

Its President

STATE OF ALABAMA
COUNTY OF BALDWIN

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that A. C. TONSMEIRE, III, whose name as President of TONSMEIRE DEVELOPMENT CORPORATION 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 this instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

NOT. 51-456 1713

6. Notice of Lien or Suit. A Unit Owner shall give notice to the Authority of every lien upon his Unit other than for permitted mortgages, taxes and special assessments, within five (5) days after the Owner's receipt of notice thereof.

(A) Notice of Lien. A Unit Owner shall give notice to the Authority of every lien upon his Unit other than for permitted mortgages, taxes and special assessments, within five (5) days after the Owner's receipt of notice thereof.

(B) Notice of Suit. A Unit Owner shall give notice to the Authority of every suit or other proceeding which may affect the title to his Unit, such notice to be given within five (5) days after the Unit Owner receives notice thereof.

(C) Failure to Comply with this subsection concerning liens or suits will not affect the validity of any judicial sale.

7. Proviso. The foregoing provisions of this Paragraph shall not apply to a transfer to or a purchase by the Federal National Mortgage Association, a bank, life insurance company, state or federal savings and loan association, FHA approved mortgagee, lending institution approved by the Authority, or the Authority itself which acquires its title as the result of owning a mortgage upon the Unit concerned, and this shall be so whether the title is acquired by deed from the mortgagor or through foreclosure proceedings; nor shall the provisions of this Paragraph apply to a transfer, sale or lease by the Federal National Mortgage Association, a bank, life insurance company, state or federal savings and loan association, FHA

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Unit; and a judgment of specific performance of the sale upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction. The expense of the arbitration shall be paid by the purchaser.

(ii) The purchase price shall be paid in cash.

(iii) The sale shall be closed within ten (10) days following the determination of the sale price.

(iv) If the Authority shall fail to purchase or to provide a purchaser as herein required, then notwithstanding the disapproval, such transfer of ownership shall be deemed to have been approved, and the Authority shall furnish a certificate of approval as elsewhere provided.

4. Mortgage. Other than to the Federal National Mortgage Association, a bank, life insurance company, state or federal savings and loan association, FHA approved mortgagee, or lending institution approved by the Authority, no Unit Owner may mortgage or retain a vendor's lien on his Unit nor any interest therein without the approval of the Authority. The approval of any mortgagee may be upon conditions determined by the Authority or may be arbitrarily withheld.

5. Unauthorized Transactions. Any sale, mortgage or lease which is not authorized pursuant to the terms of this Declaration shall be void unless subsequently approved by the Authority.

ENC. 51-35E 1711

mination of the sale price if such is by arbitration, whichever is the later.

(iv) If the Authority shall fail to purchase or to provide a purchaser as herein required, then notwithstanding the disapproval, such transfer of ownership shall be deemed to have been approved, and the Authority shall furnish a certificate of approval as elsewhere provided.

(B) Lease. If the proposed transaction is a lease, the Unit Owner shall be advised of the disapproval in writing, and the lease shall not be made.

(C) Gift, Devise, or Inheritance; Other Transfers. If the Unit Owner giving notice has acquired his title by gift, devise or inheritance, or in any other manner, then within thirty (30) days after receipt from the Unit Owner of the notice and information required to be furnished, the Authority shall deliver or mail by certified mail to the Unit Owner an offer to purchase either by the Authority or by a purchaser approved by the Authority and to whom the Unit Owner must sell the unit upon the following terms:

(i) The sale price shall be the fair market value determined by agreement within thirty (30) days from the delivery or mailing of such offer, and, in the absence of such agreement, by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two (2) appraisers appointed by the American Arbitration Association who shall base their determination upon an average of their appraisals of the

MS. 51-46E 1710

3. Disapproval by Authority. If the Authority shall disapprove a transfer of a Unit, the matter shall be disposed of in the following manner:

(A) Sale. If the proposed transaction is a sale, then within ninety (90) days after notifying the Unit Owner of such disapproval, the Authority shall deliver or mail by certified mail to the Unit Owner an offer to purchase either by the Authority or by a purchaser approved by the Authority and to whom the Unit Owner must sell the Unit upon the following terms:

(i) At the option of the purchaser to be stated in his offer, the price to be paid shall be that stated in the disapproved contract to sell, or, if less, then the fair market value, determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two (2) appraisers appointed by the American Arbitration Association, who shall base their determination upon an average of their appraisals of the Unit; and a judgment of specific performance of the sale upon any award rendered by the arbitrators may be entered in any court of competent jurisdiction. The expenses of the arbitration shall be paid by the purchaser.

(ii) The purchase price shall be paid in cash.

(iii) The sale shall be closed within thirty (30) days after the delivery or mailing of said offer to purchase, or within thirty (30) days after the deter-

if no action has been taken by the Authority within the prescribed thirty (30) day period. If approved, the approval shall be stated in a certificate executed by the President or Secretary (or other authorized representative) of the Authority in recordable form and shall be delivered to the lessee.

(iii) Gift, Devise, or Inheritance; Other Transfers. If the Unit Owner giving notice has acquired his title by gift, devise or inheritance, or in any other manner, then within thirty (30) days after receipt of such notice and information required to be furnished, the Authority must either approve or disapprove the continuance of the Unit Owner's ownership of his Unit. Approval shall be deemed given if no action has been taken by the Authority within the prescribed thirty (30) day period. If approved, the approval shall be stated in a certificate executed by the President or Secretary (or other authorized representative) of the Authority, in recordable form and shall be delivered to the Unit Owner and shall be recorded in the public records of Baldwin County, Alabama.

(C) Approval of Corporation, Partnership or Limited Partnership. Inasmuch as the Subdivision may be used only for residential purposes, and since a corporation, partnership or limited partnership cannot occupy a Unit for such use, the approval (as contemplated in this section) of a corporation, partnership or limited partnership, may be conditioned by requiring that all persons who will use or occupy the Unit be also first approved by the Authority.

MSL 51-46 1708

(iv) Failure to Give Notice. If the notice to the Authority herein required is not given, at any time after receiving knowledge of a transaction or event transferring ownership or possession of a Unit, the Authority at its election and without notice may approve or disapprove the transaction or event transferring ownership or possession. If the Authority disapproves the transaction or event transferring ownership or possession, the Authority shall proceed as if it had received the required notice on the date of such disapproval.

(B) Certificate of Approval.

(i) Sale. If the proposed transaction is a sale, then within thirty (30) days after receipt of such notice and information required to be furnished, the Authority must either approve or disapprove the proposed transaction. Approval shall be deemed given if no action has been taken by the Authority within the prescribed thirty (30) day period. If approved, the approval shall be stated in a certificate executed by the President or Secretary (or other authorized representative) of the Authority, in recordable form and shall be delivered to the purchaser and shall be recorded in the public records of Baldwin County, Alabama.

(ii) Lease. If the proposed transaction is a lease, then within three (3) days after receipt of such notice and information required to be furnished, the Authority must either approve or disapprove the proposed transaction. Approval shall be deemed given

foregoing subsections, the continuance of his ownership of his Unit shall be subject to the approval of the Authority.

2. Approval by Authority. The approval of the Authority which is required for the transfer of Subdivision Units shall be obtained in the following manner:

(A) Notice to Authority.

(i) Sale. A Unit Owner intending to make a bona fide sale of his Unit or any interest therein shall give to the Authority at least thirty (30) days written notice of such intention, together with the name and address of the intended purchaser and such other information concerning the intended purchaser as the Authority may reasonably require.

(ii) Lease. A Unit Owner, other than DECLARANT, intending to make a bona fide lease of his Unit or any interest therein shall give to the Authority notice of such intention, together with the name and address of the intended lessee, such other information concerning the intended lessee as the Authority may reasonably require, and an executed copy of the proposed lease.

(iii) Gift, Devise, or Inheritance; Other Transfers. A Unit Owner who has obtained his title by gift, devise or inheritance, or by any other manner not heretofore considered, shall give to the Authority notice of the acquiring of his title, together with such other information concerning the Unit Owner as the Authority may reasonably require, and a certified copy of the instrument evidencing the Owner's title.

MSC. 51-43E 1706

be vested in the DECLARANT until ninety percent (90%) of the Units in each phase have been sold. After the sale of ninety percent (90%) of said Units, power to approve or disapprove the transfers listed in this Paragraph shall be vested in the Association. Therefore, the term "Authority" as used in this Paragraph shall mean and refer to DECLARANT with respect to transfers of Units in any Phase in which less than ninety percent (90%) of the Units in that Phase have been sold by DECLARANT; and when ninety percent (90%) or more of such Units have been sold in any Phase, the term "Authority" shall mean and refer to the Association with respect to transfers of Units in that Phase.

1. Transfers Subject to Approval.

(A) Sale. No Unit Owner may dispose of a Subdivision Unit or any interest therein by any sale without approval of the Authority.

(B) Lease. No Unit Owner, other than the DECLARANT, may dispose of a Subdivision Unit or any interest therein by lease without approval of the Authority.

(C) Gift. If any Unit Owner shall acquire his title by gift, the continuance of his ownership of his Unit shall be subject to the approval of the Authority.

(D) Devise or Inheritance. If any Unit Owner shall acquire his title by devise or inheritance, the continuance of his ownership of his Unit shall be subject to the approval of the Authority.

(E) Other Transfers. If any Unit Owner shall acquire his title by any manner not heretofore considered in the

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ARTICLE XIV

MORTGAGES

Notice to Mortgagees of Default by Unit Owner. In the event of default in the performance by an owner of any of his duties or obligations under this Declaration, the By-Laws or the Rules and Regulations of the Association, the Association shall, if such default is not cured within sixty (60) days, upon request by the holder of a mortgage constituting a first lien on the Unit of such defaulting owner, give written notice of such default to such mortgage holder; provided, however, that if the default is a failure to pay any charges of fines or assessments to the Association, such notice shall be given if such default is not cured within fifteen (15) days; and provided further, however, that the Association shall have no obligation to give any notices to, or to take any other actions required by this Declaration with respect to, any mortgagee other than those from whom the Association has received a copy of the mortgage or written notice which sets out the particular lot or lots, the name of the mortgagor, the name and address of the mortgagee and the date of the mortgage. The Secretary of the Association shall keep a list of mortgagees which shall contain the information set out above.

ARTICLE XV

MAINTENANCE OF COMMUNITY INTERESTS

In order to maintain a community of congenial residents, preserve the financial stability of the Subdivision, and protect the value of the Units, the transfer of Subdivision Units by any Owner other than the DECLARANT shall be subject to the following provisions so long as the Subdivision exists. The power to approve or disapprove the transfers listed in this paragraph shall

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Section 2. Resolution. A resolution adopting a proposed amendment may be proposed by a majority of the Board of Directors or the members, and after being so proposed and approved by one (1) of such bodies, it must be then approved by the other to become effective. Directors and members not present at the meeting considering the amendment may express their approval or disapproval in writing, providing such approval or disapproval is delivered to the Secretary at or prior to the meeting. Such approval must be by not less than a majority of the votes of the Association. If the mortgage so provides, for the purposes of this subparagraph, that a mortgagee holding a mortgage comprising a first lien upon any Unit shall express its approval or disapproval of such resolution in writing, the expression of such mortgagee shall be deemed to be that of the Unit Owner, and any contrary expression by the owner of such Unit shall be disregarded.

Section 3. Recording. A copy of each amendment shall be certified by the President and Secretary of the Association as having been duly adopted and shall be effective when recorded in the office of the Judge of Probate of Baldwin County, Alabama.

Section 4. Agreement. In the alternative, an amendment may be made by an agreement signed and acknowledged by seventy percent (70%) of the record owners of lots in the subdivision and all mortgagees holding mortgages upon all lots in the manner required for the execution of a deed, and such amendment shall be effective when recorded in the office of the Judge of Probate of Baldwin County, Alabama.

Section 5. Government Regulations. Declarant may make any amendment to this Declaration that may be required by federal or state law or regulations, without complying with the terms of this Article XII.

NOT. 51-486 1703

maintain sufficient insurance as provided for herein, the Association, after approval by two-thirds (2/3) of the Board of Directors, shall have the right to purchase said insurance, and the cost of such insurance shall be borne by the Unit Owner and collected by the Association from said Unit Owner, in the same manner as elsewhere provided for herein for the collection of assessments by the Association.

ARTICLE XII

RECONSTRUCTION OR REPAIR AFTER CASUALTY

In the event of the damage or destruction of all or part of a Unit, the Unit Owner shall be responsible for the prompt reconstruction and repair after such casualty; provided that should the Unit Owner fail to repair or replace within a reasonable period, the Association may do so for his account and shall be entitled to use the insurance proceeds payable pursuant to the provisions of Article XI for such purpose. In the event such proceeds are insufficient for such purpose, the Association shall have the right to assess the Unit for such deficiency and shall have a lien enforceable as provided in Article VIII, Section 7 of this Declaration.

NOT. 51-406-1702

ARTICLE XIII

AMENDMENT

Any amendments to this Declaration shall be made in the following manner:

Section 1. Notice. Notice of the subject matter of the proposed amendment shall be included in the notice of any meeting of the Association at which a proposed amendment is to be considered.

Section 2. In the event an owner of any Lot in the Properties shall fail to maintain the premises and improvements situated thereon as required by Section 1 in a manner satisfactory to the Board of Directors, the Association, after approval by two-thirds (2/3) vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon said Lot or Unit and to repair, maintain and restore the Lot and the buildings and any other improvements erected thereon. The cost of the same shall be added to and become a part of the assessment to which such Lot is subject.

Section 3. No Owner shall do any act or any work that will impair the structural soundness or integrity of any Unit or impair any easement or hereditament, nor shall any Owner do any act or allow any condition to exist which will adversely affect any other Unit or its Owner.

ARTICLE XI
INSURANCE

Each Unit Owner shall and is hereby deemed responsible for maintaining sufficient insurance upon his Unit so as to provide full replacement value thereof in the event of a casualty, including, without limitation: (a) loss or damage by fire and other hazards covered by a standard extended coverage endorsement; (b) such other risks as from time to time shall be customarily covered with respect to buildings similar in construction, location and use as the buildings on the land including, but not limited to, vandalism, malicious mischief and windstorm; and (c) flood insurance, if applicable. Each such policy of insurance on each Unit in the Subdivision shall name the Association as a loss payee, and each Unit Owner shall provide the Association with evidence that such insurance is in full force and effect. In the event an Owner of any Lot in the Properties shall fail to

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(s) raise, breed or keep animals, livestock or poultry of any kind on any lot except that dogs, cats and other household pets may be kept, subject to rules and regulations adopted by the Association, provided that they are not kept, bred or maintained for any commercial purpose, and further provided that they do not constitute a nuisance to other residents of the development.

(t) erect outbuildings or storage building of any kind upon the Properties;

(u) cut or otherwise destroy any growing tree unless said growing tree becomes a hazard to person or property;

Section 2. Enforcement. In addition to all legal and equitable rights which are otherwise available to the Association for the enforcement of the foregoing Restrictions, Rules and Regulations, the Association shall have the right to charge and be entitled to receive payment of a fine in the amount of \$100.00 per day for the violation by any Owner of any provision of this Declaration. Any fine so imposed shall be secured by a lien in favor of the Association, which lien may be enforced pursuant to the provisions of Article VIII Section 7 of this Declaration. No action shall at any time be taken by the Association or its Board of Directors which in any manner would discriminate against any Owner or Owners in favor of the other Owners.

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ARTICLE X

MAINTENANCE AND REPAIR

Section 1. Each owner shall, at his expense, maintain and repair his Unit, keeping the same at all times in first class condition and making such structural and non-structural repairs as may be required.

(i) divide or subdivide a lot into a smaller Lot or Lots so as to create a Lot smaller in size than that shown by the plat of SUMMER OAKS, as hereinabove described;

(j) obstruct the common way of ingress and egress to the other Lots or to the Common Area;

(k) place or allow anything to remain in or on the Common Area which would be unsightly or hazardous;

(l) allow any rubbish, refuse, garbage or trash to accumulate in places other than the receptacles provided therefor; and each Unit and the Common Area shall at all times be kept in a clean and sanitary condition. Garbage shall be placed in waterproof bags or similar containers before being placed in the appropriate receptacles;

(m) allow any fire or health hazard to exist;

(n) make use of the Common Area in such a manner as to abridge the equal rights of the other Owners to the use and enjoyment of same;

(o) lease or rent less than an entire Unit so that the high quality of this development shall be maintained and shall not be permitted to become a lodging facility for transients;

(p) permit a boat or boat trailer to be kept or maintained on the parking spaces or permit said parking spaces to be used for the storage or parking of trucks, campers, motor homes or any other vehicle, apparatus or equipment (excluding passenger vehicles) without the written approval of the Board of Directors;

(q) use the Unit for anything other than for residential purposes; said properties being hereby restricted to single-family residential dwellings;

(r) repair any motor vehicle, boat or other vehicle upon the Common Area or upon any portion of any Lot except for emergency repairs thereto and then only to the extent necessary to enable movement thereof to a proper repair facility;

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fications for the work proposed by the Owner. In the event the Board of Directors shall fail to approve or disapprove such request by an Owner within sixty (60) days from submission of same to the Board of Directors or to its designated representative, such approval shall be deemed given and this covenant shall be deemed to have been fully complied with; and nothing herein contained shall prevent, or is intended to prevent, an Owner from maintaining or making repairs to his Unit so as to maintain his Unit in the condition existing at the time of purchase;

(b) permit loud and objectional noises or obnoxious odors to emanate from the Unit or from vehicles which may cause a nuisance to the occupants of other Units;

(c) make any use of a Unit which violates any laws, ordinances or regulations of any governmental body or governmental agency;

(d) fail to conform to and abide by the By-Laws and the uniform rules and regulations in regard to the use of the Common Area which may be adopted from time to time by the Board of Directors of the Association;

(e) erect, construct or maintain any wire, radio, television or other type antennas, garbage or refuse receptacles, or other equipment or structures on the exterior of the building or on the Common Area, except with the written consent of the Board of Directors;

(f) permit or suffer anything to be done or kept on the properties which will increase insurance rates on any Unit;

(g) commit or permit any nuisance, upon the properties herein described;

(h) divide or subdivide a Unit into a smaller Unit or Units; provided, however, that an entire Unit may be combined with an entire adjacent Unit and occupied as one Unit;

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Section 8. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage made by an Owner as to his Unit or Lot. Sale or transfer of any Lot and Unit shall not discharge or otherwise affect the assessment lien. However, the sale or transfer of any Lot and Unit pursuant to the foreclosure of a first mortgage or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot and Unit from liability for any assessments thereafter becoming due or from the lien thereof or relieve the prior owner from any personal liability for any unpaid assessments occurring prior to said sale or transfer.

ARTICLE IX

RESTRICTIONS UPON USE, STRUCTURAL AND ARCHITECTURAL CHANGE

Section 1. Use Restrictions, Rules and Regulations. No owner, tenant or other occupant of the properties herein described shall, without the prior written consent of the Board of Directors:

(a) change (whether by painting or otherwise) the appearance of any exterior wall, door, window, terrace, balcony or any exterior surface; enclose any terrace or balcony with screen, glass or other material; erect any exterior lights or signs; place any signs in windows; erect or attach any structures or fixtures to the Common Area; nor make any structural additions or alterations (except the erection or removal of nonsupporting interior partitions wholly within the Unit) to any Unit or to the Common Area. Any Owner who wishes to accomplish any of the foregoing shall make such request in writing, to be sent by United States mail, certified, to the Board of Directors together with, if necessary, one (1) copy of the plans and speci-

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Section 7. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date and all fines imposed by the Association for violation of the use restrictions contained in Article IX of this Declaration shall bear interest from the date of delinquency at a rate equal, at the time of the delinquency, to (1) the most recently quoted six-month U.S. Government Treasury obligations plus six percent (6%) (provided that such a rate does not exceed the highest legal rate permitted under Alabama law), or (2) the highest legal rate permitted under Alabama law, whichever is greater. The Association may bring an action at law or in equity against the Owner personally obligated to pay the same, foreclose a lien against the property or seek injunctive relief, and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. Each such Owner, by his acceptance of a deed to a Lot and Unit, hereby expressly vests in the Association the right and power to bring all actions against such Owner personally for the collection of each charge as a debt and to foreclose the aforesaid lien by all methods available for the enforcement of such liens, including foreclosures by public sale or by an action brought in the name of the Association in a like manner as foreclosure of a mortgage lien on real property, and such Owner hereby expressly grants to the Association a power of sale in connection with said lien. The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all Lot and Unit Owners. The Association, acting on behalf of the Lot and Unit Owners, shall have the power to bid for an interest foreclosed at foreclosure sale and to acquire and hold, lease, mortgage and convey the same. No Owner may waive or otherwise avoid liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot and Unit.

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half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 4. Uniform Rate of Assessment. The assessments herein described shall be fixed at a uniform rate for all Lots.

Section 5. 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 the 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 the 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.

Section 6. Date of Commencement of Assessments: Due Dates.

The annual assessments provided for herein shall commence at such time as it is fixed by the Board of Directors and shall be paid at such time or times as the board of Directors shall fix and determine. Written notice of the assessment shall be sent to every Owner subject thereto. The due date shall be established by the Board of Directors and, unless the Board otherwise provides, one-twelfth (1/12) of any annual maintenance or other special assessments shall be due each month. 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.

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assessments for capital improvements to the Common Area, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, reasonable attorney's fees and late fees if adopted by the Board of Directors, 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, cost, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of the property at the time when the assessment fell due. The personal obligation for delinquent assessment shall not pass to the Owner's successors in title unless expressly assumed by such successors.

Section 2. Special Assessments for Capital Improvements

Upon Common Area. 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 (2/3) of the votes of members who are voting in person or by proxy at a meeting duly called for such purpose.

Section 3. Notice and Quorum for any Action Authorized Under Sections 2 and 3. Written Notice of any meeting called for the purpose of taking any action authorized under Section 2 or 3 shall be sent to all members not less than thirty (30) days nor more than sixty (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 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-

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including counsel fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having been a Director or Officer of the Association, whether or not he is a Director or Officer at the time such expenses are incurred, except in such cases wherein the Director or Officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided in the event of a settlement, the indemnification herein shall apply only when the Board of Directors approves such settlement and reimbursement as being for the best interest of the Association. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such Director or Officer may be entitled. The Association shall purchase and pay for Directors' and Officers' liability insurance giving coverage in an amount not less than \$1,000,000.00.

Section 10. Limitation of Liability. Notwithstanding the liability of the Association to maintain and repair parts of the Subdivision property, the Association shall not be liable for injury or damage caused by a latent condition of the property to be maintained and repaired by the Association nor for injury or damage caused by the elements, or other owners or persons.

ARTICLE VIII

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 the Association: (1) annual assessments or charges, and (2) special

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of a corporation) or by the general partners (in the case of a partnership or limited partnership), which certificate shall be filed with Secretary of the Association. If such a certificate is not on file with the Secretary of the Association for a Unit owned by more than one (1) person or by a corporation, partnership or limited partnership, the membership or vote of the Unit concerned shall not be considered in determining the requirement for a quorum nor for any purpose requiring the approval of the person entitled to cast the vote for the Unit. Such certificate shall be valid until revoked or until superseded by a subsequent certificate or until a change in the ownership of the Unit concerned is effected. A certificate designating the person entitled to cast the vote of a Unit may be revoked by any owner thereof.

Section 6. Approval or Disapproval by Unit Owners.

Whenever the approval or disapproval of a Unit Owner is required upon any matter, whether or not the subject of an Association meeting, such approval or disapproval shall be expressed by the same person who would cast the vote of such owner if in an Association meeting, unless the joinder of all record owners is specifically required by this Declaration.

Section 7. Restraint upon Assignment of Shares in Assets. The share of a member in the funds and assets of the Association cannot be assigned, hypothecated, or transferred in any manner except as an appurtenance to his Unit.

Section 8. Board of Directors. The affairs of the Association shall be conducted by a Board of Directors which shall consist of three (3) members in accordance with Article III of the By-Laws of Summer Oaks, a Townhome Subdivision.

Section 9. Indemnification. Every Director and every Officer of the Association shall be indemnified by the Association against all expenses and liabilities, or any settlement thereof,

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of the Association which shall not in any event use such surplus or any part thereof in any way other than to furnish services, repairs, improvements, insurance, goods or other items of value to or for the benefit of the Unit Owners.

Section 3. Change of Membership. Change of membership in the Association shall be established by recording in the public records of Baldwin County, Alabama, a deed or other instrument establishing a record fee simple title to a Unit in the Subdivision, and the delivery to the Association of a certified copy of such instrument, the owner designated by such instrument thereby becoming a member of the Association. The membership of the prior owner shall be thereby terminated.

Section 4. Voting Rights. Each Unit shall be entitled to one (1) vote, the numerical value of which shall be the same percentage of ownership as previously defined in Section 2 of Article VII above. The vote for a Unit shall be cast by the Owner thereof, or in the case of a corporate owner, by an officer or employee thereof. Owners of more than one (1) Unit shall be entitled to a vote for each Unit owned. However, should the Association be a Unit Owner, it shall not have the voting right for that Unit.

Section 5. Designation of voting representative. In the event a Unit is owned by one (1) person, that person's right to vote shall be established by the record title to his Unit. If a Unit is owned by more than one (1) person, the person entitled to cast the vote for the Unit shall be designated by a certificate signed by all of the record fee simple owners in the Unit and filed with the Secretary of the Association. If a Unit is owned by a corporation, partnership or limited partnership, the officer, employee or individual entitled to cast the vote for the Unit shall be designated by a certificate of appointment signed by the president or vice president and attested by the secretary or assistant-secretary of the corporation (in the case

NOT. 51, AGE 1691

shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

ARTICLE VII

MEMBERSHIP AND VOTING RIGHTS

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

Section 2. The percentage of undivided interest of each Unit in the Common Area shall be equal; that is to say, at any given time the undivided percentage of ownership of each Unit then in the Subdivision shall be that percentage arrived at by using the number one (1) as the numerator, and the number of Units then incorporated into the Subdivision as the denominator. For purposes of percentage of ownership in the Common Area, percentage of common expenses, percentage of common surplus, and voting on all matters requiring action by the Unit Owners, the percentages as determined by the method stated shall govern; and upon the incorporation of any one or more additional phases into the Subdivision by additions to Existing Property as elsewhere herein provided, the percentage of undivided interest of each Unit shall be redetermined in accordance with the method herein established and shall govern according to the situation which then may be applicable. The common expenses shall be charged to the Unit Owners according to the percentages of the undivided interest of the respective units in the Common Area. Common surplus shall be a trust fund for the Unit Owners and shall either be distributed among the Unit Owners according to the respective percentages of the undivided interest of the respective Units in the Common Area or applied to the following year's assessment, unless otherwise determined by the Board of Directors

REV. 51-416 1690

for in this Article shall in no way affect any other recorded easements on said Properties.

ARTICLE VI

PARTY WALL

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Units upon the Properties and placed on or at the dividing line between the Lots shall constitute a Party Wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding Party Walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a Party Wall shall be shared equally by the Unit owners upon which the Party Wall is situated; provided that, should a Party Wall be damaged by the negligent or intentional act or omission of any Owner or any member of his family or his tenant or guest, then all such repair costs shall be borne by such Owner.

Section 3. Waterproofing. Notwithstanding any other provision of this Article, an Owner, who by his negligent or willful act or omission causes the Party Wall to be exposed to the elements, shall be responsible for the entire cost of providing the necessary protection against such elements.

Section 4. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 5. Arbitration. In the event of any dispute concerning a Party Wall, or under the provisions of this Article, each party shall choose one arbitrator and such arbitrators

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easement upon, across, over and under all of the Properties for water runoff from roofs, decks, or any other portion of a Lot or Unit. By virtue of these easements, it shall be expressly permissible to erect and maintain the necessary poles and other equipment on the Property and to affix and maintain electrical or telephone wires and conduits, sewer and water lines, and underground foundations above, on or below any Unit or Lot of any owner. An easement is hereby granted to the Association, its officers, agents, and employees, including employees of any management company having a contract with the Association, over all of the Common Area to enter any Unit to perform the duties of maintenance and repair of the Units or Common Area, to maintain any utilities or other improvements for which an easement has been granted and to prevent damage to any other Unit. An easement is hereby reserved to Declarant to enter the Common Area or any additions to the Properties, and to maintain such facilities and perform such operations as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction, management and sale of Units, including, without limitation, a business office, sales office, storage area, construction yards, signs and model Units.

Section 4. There are hereby granted reciprocal appurtenant easements for the maintenance and repair of any and all party walls. An easement is hereby granted to all fire protection, ambulance, police and other similar persons and agencies, to enter upon the private streets and parking areas in the performance of their duties. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, communication lines or other utilities may be installed or relocated on said Properties except as initially specified, planned and approved by the Declarant or thereafter approved by the Declarant or the Association's Board of Directors. The easements provided

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

ARTICLE V

EASEMENTS

Section 1. Easements for Utilities. Declarant reserves the right to grant easements, both temporary and permanent, to all public authorities and utility companies over any part of the Common Area described herein.

Section 2. Easements for Encroachments. Each Lot, and the property included in the Common Area, shall be subject to an easement for encroachments created by construction, settling, patios, balconies, stair landings, foundations and overhangs for all buildings constructed by Declarant. Declarant does hereby declare and establish an easement for said encroachments and for the maintenance of same, so long as such encroachments exist. .

In the event that any structure containing two or more Units is partially or totally destroyed and then rebuilt, the the Units so affected shall have an easement to accommodate any minor encroachments of parts of the adjacent Units on Common Areas due to construction, and an easement for said encroachment and the maintenance thereof shall exist.

Section 3. Other Easements. There is hereby created a blanket easement upon, across, over and under all of the Properties for ingress, egress, installation, replacement, repair and maintenance of all utilities and other improvements approved by the Board of Directors, including, but not limited to, water, sewers, gas, telephones, electricity, a master television antenna system, cable television system, underground foundations, roof overhangs and eaves. There is also hereby created a blanket

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of the Units, including but not limited to the showing of the property and the display of signs.

ARTICLE IV

PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every owner shall have and is hereby granted a right and easement of ingress, egress, use and 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 an initial admission fee and other fees for the maintenance of the Common Area.

(b) The parking of automobiles in the designated area within the Common Area is restricted to owners and guests, invitees and tenants of owners, and shall not interfere with the rights of ingress and egress of the Owner of any particular lot.

(c) The right of the Association, in addition to its other rights as hereinafter set forth, to suspend the voting rights and the right to the use of the Common Area by an Owner for any period during which any assessment against his lot remains unpaid, after hearing by the Board of Directors of the Association.

(d) 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 and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of the members to such dedication or transfer has been recorded.

NOT. 51-101 1605

ARTICLE III

PROVISO

All provisions contained in this Declaration, the By-Laws and the Articles of Incorporation of Summer Oaks are subject to the following proviso:

With respect to the Existing Property and all improvements constructed or to be constructed thereon, until the Declarant has completed and sold ninety percent (90%) of the Units located on the Existing Property, or until Declarant elects to terminate its control of this portion of the Subdivision, whichever shall first occur, and provided further, in the event of additions to the Existing Property in accordance with Article II of this Declaration, then with respect to the Existing Property and any additions made thereto, until the Declarant has completed and sold ninety percent (90%) of the Units in the Existing Property and in any additions made thereto or until Declarant elects to terminate its control of the Subdivision then consisting of the Existing Property and any additions thereto, whichever shall first occur, the rules adopted by the Declarant shall govern, and there shall be no meeting of the members of the Association unless a meeting is called by the Board of Directors of the Association, and neither the Unit Owners nor the Association nor the use of the Properties by Unit occupants shall interfere with the contemplated improvements and the sale of the Units. Further, all benefits, duties, rights and obligations imposed on the Association by this Declaration, the By-Laws or the Articles of Incorporation shall vest in and be retained by the Declarant until such time as the control of the Subdivision shall have passed to the Association in accordance with the provisions of this Article. Declarant may make such use of the unsold Units and of the Common Area as may facilitate the completion and sale

NOT. 51-436 1685

right to use and/or dispose of, and to lease, rent, mortgage, encumber, use, occupy, construct, improve or otherwise utilize any contiguous property for any present or future use that is permitted under the laws of the State of Alabama. For purposes of this Article, such additional properties shall be deemed to be "contiguous" even though separated from the Existing Property by streets, roads, highways, rivers, streams, rights-of-way, railroads, utilities or other intervening physical features or property interests not inconsistent with the general contiguity of the lands in question.

(b) Mergers, Combinations or Consolidations. Upon merger, combination or consolidation of the Association with another association, the properties, rights and obligations of the Association, may, by operation of law, be transferred to another surviving or consolidated association, or, in the alternative, the properties, rights and obligations of another association may, by operation of law, be added to the properties of the Association as a surviving corporation pursuant to a merger, combination or consolidation. The surviving or consolidated association may administer the Covenants and Restrictions established by this Declaration within the Existing Property, together with the covenants and restrictions established upon any other properties as one scheme. No such merger, combination or consolidation, however, shall effect any revocation or change of, or addition to the Covenants and Restrictions established by this Declaration within the Existing Property, except as herein provided.

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or certificates of incremental development amendment to this Declaration at the time of or prior to the recordation of the conveyance of the first unit in any subsequent Phase or addition; provided, however, that if any such subsequent Phases or additions be not incorporated in the Subdivision by filing of such certificate or certificates of incremental development amendment on or before twenty (20) years from the date of the filing of this Declaration, then the property not so incorporated into the Subdivision by the filing of such certificate or certificates, and the improvements to be constructed thereon, shall not be or become a part of the Subdivision except by amendment of this Declaration in the manner elsewhere provided. As long as such property is not incorporated into the Subdivision, the Declarant and/or other owner thereof shall have the right to use and/or dispose of, and to lease, rent, mortgage, encumber, use, occupy, construct, improve or otherwise utilize any such property for any present or future use that is permitted under the laws of the State of Alabama free and discharged of the provisions of this Declaration, and the total Subdivision property shall consist only of the Subdivision property herein created as the Existing Property and any other property incorporated in the Subdivision by the filing of such certificate or certificates of incremental development amendment. Declarant reserves the right to construct additional Units on future Phases of the Subdivision or additions thereto, which Phases of the development are presently unimproved. Any units so constructed upon future Phases shall be of such size, number, location and design as Declarant shall determine. Prior to the Declarant incorporating any other property in the Subdivision by the filing of such certificate or certificates of incremental development amendment, it shall have the

REC. 51-46E 1683

Section 8. "Declarant" shall mean and refer to TONSMEIRE DEVELOPMENT CORPORATION, an Alabama corporation, its successors and assigns.

Section 9. "Subdivision" shall mean and refer to that subdivision known as "SUMMER OAKS, a Townhome Subdivision", as recorded in the office of the Judge of Probate of Baldwin County, Alabama, in Map Book 122, page 15, and all additions thereto.

Section 10. "Member" shall mean and refer to those persons entitled to membership as elsewhere provided in the Declaration.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION: ADDITIONS THERETO

Section 1. Existing Property. The real property which is, and shall be, held, transferred, sold, conveyed, leased and occupied, subject to this Declaration, is located in Baldwin County, Alabama and is referred to as SUMMER OAKS, a Townhome Subdivision, recorded in the office of the Judge of Probate of Baldwin County, Alabama, and is herein referred to as the "Existing Property". The following exhibits are attached to this Declaration and are made a part hereof:

- Exhibit A - Subdivision plat of Summer Oaks, a Townhome Subdivision;
- Exhibit B - Legal description of the Existing Property.

Section 2. Additions to Existing Property. Lands in addition to the Existing Property described above may hereafter become subject to this Declaration in the following manner:

- (a) Incremental Development. The Declarant, at its sole option, may develop the project on an incremental basis on contiguous property by filing, within twenty (20) years from the creation of the Subdivision, a certificate

NOT. 51.40E 1682

ARTICLE I
DEFINITIONS

Section 1. "Association" shall mean and refer to Summer Oaks 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 the 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 Summer Oaks, a Townhome Subdivision, recorded in the office of the Judge of Probate of Baldwin County, Alabama in Map Book 12, page 13, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property in the Subdivision (including the improvements thereon) which is not a part of any Lot or Unit. Said Common Area shall be owned by the Association for the common use and enjoyment of the owners. The Common Area to be owned by the Association at the time of the conveyance of the first Lot is that area detailed and designated as "Lot A" on that certain plat of subdivision of Summer Oaks, a Townhome Subdivision as recorded in Map Book 12, Page 28 in the records of the Judge of Probate of Baldwin County, Alabama.

Section 5. "Board of Directors" shall mean and refer to the Board of Directors of the Association.

Section 6. "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.

Section 7. "Unit" shall mean and refer to any Lot as defined in Section 6 of this Article, together with all improve-

REC. 51 AGE 1681

DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS FOR SUMMER OAKS,
A TOWNHOME SUBDIVISION

THIS DECLARATION, made on the date hereinafter set forth by TONSMEIRE DEVELOPMENT CORPORATION, an Alabama corporation, (hereinafter referred to as "DECLARANT");

W I T N E S S E T H :

WHEREAS, Declarant is the owner of certain real property located in the County of Baldwin, State of Alabama, which has been subdivided as shown on a plat of Summer Oaks, a Townhome Subdivision, recorded in the office of the Judge of Probate of Baldwin County, Alabama, in Map Book 12 page 78; and

WHEREAS, Declarant intends to subject Summer Oaks, a Townhome Subdivision, to these covenants, conditions, restrictions, and easements.

NOW, THEREFORE, Declarant hereby declares that all of the properties described on the plat of Summer Oaks, a Townhome Subdivision (hereinafter sometimes referred to as "Summer Oaks"), as recorded in the office of the Judge of Probate of Baldwin County, Alabama in Map Book 12, page 78, 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 Summer Oaks or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

STATE OF ALABAMA,
BALDWIN COUNTY

I certify that this instrument was filed on

7:03P

MST. 51 JUL 16 1980