

BOOK PAGE
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STATE OF ALABAMA)
COUNTY OF MADISON)

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STATE OF ALA. MADISON CO
I CERTIFY THIS INSTRUMENT
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RECORDED & INDEXED
ON THIS INSTRUMENT
JUDGE OF PROBATE

PROTECTIVE COVENANTS AND RESTRICTIONS

OF

WINDHILL SUBDIVISION, MAGNOLIA SPRINGS ADDITION

WHEREAS, WindHill Development Co., Inc., an Alabama Corporation, composed of William H. Johnston, Jr., George A. Moore, James A. Holman and Mary Elizabeth Holman (herein referred to as the "Developer"), is the owner of all of the real property described and embraced in what is known as WindHill Subdivision, Magnolia Springs Addition, (hereinafter referred to as the "Subdivision") according to the map or plat of said Subdivision dated June 14, 1998, and filed for record on the 20th day of July, 1998, and recorded in Plat Book 36 at Page 79 in the Office of the Judge of Probate of Madison County, Alabama (hereinafter referred to as the "Plat"); and

WHEREAS, Developer, as owner of the Subdivision, desires, before any of the lots or parcels of ground in the Subdivision are sold or conveyed to other persons, corporations, entities or firms, to establish and fix certain Protective Covenants and Restrictions as to the enjoyment and use of all of the lots and parcels of real property located within the Subdivision as said lots and parcels of real property are laid down and platted in the Plat of the Subdivision, and to make such restrictions a part of the dedication of the streets, alleys, and public ways so dedicated to the public by the filing of the Plat, and thereby protect all persons, corporations, entities or firms that may in the future become owners of said lots and parcels of real property, or any part thereof; and

WHEREAS, the Subdivision is a common and uniform plan and scheme of development of the real property embraced therein, and these Protective Covenants and Restrictions shall provide for orderly sale and development and enjoyment and use of the lots and parcels of real property within the Subdivision:

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NOW, THEREFORE, Developer, by these presents, establishes and fixes the following Protective Covenants and Restrictions as to the future development, enjoyment and use of the lots and parcels of real property located in the Subdivision:

1. No lot or lots within the Subdivision (herein referred to as the "Lot") shall be used except for single family residential purposes. No structure shall be erected, altered, placed or permitted to remain on any Lot other than one (1) detached, single-family dwelling not to exceed two and one-half (2 1/2) stories in height and one (1) detached private garage for not more than two (2) vehicles, except for other structures incidental to, and requested for, proper residential use of a Lot, including, but not limited to, necessary outbuildings or storage sheds, as may be approved by the Architectural Control Committee as provided herein.

2. Developer has engaged the services of an Architectural Control Committee who shall establish exterior architectural standards and guidelines (herein referred to as the "Exterior Architectural Standards and Guidelines") for development of the Subdivision including, but not limited to dwellings, mailboxes, driveways and other structures located on lots (herein referred to as the "Improvements"). Developer shall cause the Architectural Control Committee to furnish each owner of a Lot (herein referred to as a "Lot Owner") with a copy of the Exterior Architectural Standards and Guidelines which shall be used by Lot Owner and his architect in designing the Improvements to be placed upon his particular Lot. Upon completion of the architectural plans of the Improvements by the Lot Owner's architect, the same shall be approved in writing by the Architectural Control Committee. Once so approved, said plans shall not be changed or deviated from without the further written approval of the Architectural Control Committee. Upon completion of the Improvements, the Architectural Control Committee shall

certify in writing that the same are in accordance with the Exterior Architectural Standards and Guidelines and have been completed according to the plans.

The initial Architectural Control Committee may be replaced by Developer at Developer's sole discretion.

3. The ground floor area of the main structure of a residential dwelling erected or allowed to occupy or remain on any Lot, exclusive of one (1) story open porches and attached carports or garages, shall not be less than twenty five hundred (2,500) square feet for a one (1) story dwelling, or not less than eighteen hundred (1,800) square feet for a two (2) or two and one half (2 1/2) story dwelling.

No residential dwelling shall be erected or allowed to occupy or remain on any Lot which Lot has an area of less than eighteen thousand (18,000) square feet. Residential dwellings may be erected or placed on Lots as shown on the Plat; however, no more than one residential dwelling shall be allowed per Lot or combined Lots.

No Improvement shall be located on any Lot nearer to the front Lot line or nearer to the side street line than the minimum building setback line shown on the Plat. In any event, no Improvement shall be located on any Lot nearer than thirty-five (35) feet to the front Lot line, and on corner Lots, no Improvement shall be located nearer than thirty-five (35) feet to any side street line. No Improvement shall be located nearer than ten (10) feet to an interior Lot line and no Improvement shall be located nearer than forty (40) feet to the rear Lot line. Permitted detached rear yard accessory structures shall be set back at least five (5) feet from any utility and drainage easement line.

No Improvement that is one (1) to one and one-half (1 1/2) stories in height shall be located nearer than ten (10) feet to an interior Lot line. No Improvement that is between two (2) and two and one-half (2 1/2) stories in height shall be located nearer than twelve (12) feet to an interior Lot line. For the purposes of these Protective Covenants and Restrictions, eaves and steps shall not be considered as part of an Improvement, provided, however, that this shall not be construed to prevent any portion of an Improvement on a Lot to encroach upon another Lot. In the event the Architectural Control Committee shall decide, in its sole and absolute discretion, that strict enforcement of the setback lines and distances or other provisions contained within these protective Covenants and Restrictions would work an unnecessary hardship in any specific instance, then the Architectural Control Committee shall have the right to waive said setback line and distance requirements contained herein by filing written notice of such waiver in the Office of the Judge of Probate of Madison County, Alabama prior to the sale of any Lot affected thereby.

4. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the Plat and the dedication and granting of said easements shall not prevent the use thereof by any Lot Owner for any permitted purpose except for the erection or location of Improvements thereon.

Should the owner of two adjacent and contiguous Lots desire to build and maintain one residential dwelling on both Lots, said owner must obtain written approval of the Architectural Control Committee, including approval of any relocation or extension of any easement, in addition to any required vacation of said easement required by any governmental body. Said Lot restrictions established in these protective Covenants and Restrictions shall apply to the exterior side Lot lines of the combined Lot.

5. No noxious or offensive activity, or any commerce or trade, shall be carried on upon any Lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood of which the Subdivision forms a part.

6. No structure of a temporary character, basement, barn, garage, shack, tent, trailer, or other building shall be used on any Lot at any time as a residence, either temporarily or permanently.

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No temporary structure of any kind, occupied or unoccupied, shall be permitted upon any Lot during construction of a residential dwelling on said Lot without the prior written approval of the Architectural Control Committee.

7. No sign of any kind shall be displayed to the public view on any Lot except one sign of not more than five (5) square feet used by a builder or a realtor to advertise that the Lot is for sale or rent.

8. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

9. At no time shall any satellite receiving dish ever be permitted in the Subdivision or any part thereof.

10. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other domesticated household pets may be kept, provided they are not kept, bred or maintained for any commercial purpose.

11. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

12. No Improvement which is not structurally a part of the main dwelling, including but not limited to, necessary outbuildings or storage sheds, shall be permitted or located on any Lot unless the same first has been approved by the Architectural Control Committee, at the Lot Owner's expense, as to its location and exterior design to ensure harmony with the dwelling on the particular Lot, as well as dwellings and other Improvements on other Lots.

13. Portions of the Subdivision are designated on the Plat as "Common Area" (hereinafter referred to as the "Common Area"). The Common Area is intended to provide for open space, parks, playgrounds, or other recreational purposes, active or passive, relating to the Subdivision to offer recreational opportunity close to home, to enhance the appearance of the neighborhoods through preservation of natural green spaces, and to counteract the effects of urban congestion and monotony, and thus are intended to conserve local spots of natural beauty, to provide structure to neighborhood design, to add to the sense of spaciousness, to help promote the public health, safety and welfare of the persons residing nearby, and to aid in preserving property values.

The following provisions shall apply to the Common Area:

A. The Common Area shall be owned jointly by the Lot Owners, and shall be managed, cared for, maintained, repaired, and insured by WindHill Communities Homeowner's Association, Inc., an Alabama non-profit corporation (herein referred to as the "Association") as set forth herein.

B. The Association shall be composed of those persons or entities who hold and own a fee simple title in and to each and every Lot in the Subdivision (the Lot owners) as reflected by the records on file in the Office of the Judge of Probate of Madison County, Alabama, from time to time, but shall not include any person or entity who holds a mortgage or other lien on a Lot.

C. Membership in the Association is an express condition precedent to ownership of a Lot.

D. By acceptance of a deed to a Lot, a Lot Owner is deemed to have accepted membership in the Association.

E. Payment for management, care, maintenance, repair, and insurance of the Common Area is to be paid by the Association from a fund supplied by a

mandatory assessment annual contribution from the Lot Owners which shall be secured by a lien on the Lot, which lien is hereby made expressly subject to existing restrictions, easements of record, applicable zoning ordinances, liens for ad valorem taxes, as well as expressly subject and subordinate to the lien and title of a lender holding a properly perfected first mortgage on any particular Lot. Said assessment lien may be enforced by any remedy available in law or in equity, including, but not limited to, foreclosure as provided by applicable law, and the By-Laws.

F. Procedure for governance of the Association and for the management, care, maintenance, repair and insurance of the Common Area, shall be as provided by the Articles of Incorporation (herein referred to as the "Articles of Incorporation"), and the By-Laws (herein referred to as the "By-Laws"), of the Association on record in the Office of the Judge of Probate of Madison County, Alabama, as may be amended from time to time, which said Articles of Incorporation and By-Laws are by this reference incorporated herein and made a part hereof.

G. For the year 1998 the Developer, at its expense, shall be solely responsible for the care and maintenance of the Common Area. Commencing January 1, 1999, and thereafter, said care and maintenance shall be the sole responsibility of the Association. Care and maintenance of the individual Lots within the Subdivision shall be the responsibility of the Developer until such time as the Lots are sold, at which time the care and maintenance of a particular Lot shall be the responsibility of the Lot Owner.

14. To protect the Subdivision as a common and uniform plan and scheme of development, uniform tree plantings (herein referred to as the "Required Plantings") are required both on individual Lots and the Common Area of the Subdivision as shown on a drawing of the Subdivision attached hereto as Exhibit "A" and by this reference incorporated herein. A Lot Owner shall be responsible for the care, maintenance and replacement of all Required Plantings located on his Lot; the care, maintenance and replacement of all Required Plantings located in the Common Area being the responsibility of the Association. Nothing in this provision shall be construed to prevent any Lot Owner from placing additional plantings on his Lot; provided, however, anything in these Protective Covenants and Restrictions to the contrary notwithstanding, all Required Plantings shall be maintained as shown on Exhibit "A" unless waived by a majority vote of the Board of Directors of the Association.

15. These Protective Covenants and Restrictions are to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from the date these Protective Covenants and Restrictions are filed for record in the office of the Judge of Probate of Madison County, Alabama, after which time said Protective Covenants and Restrictions shall be automatically extended for successive periods of ten (10) years each unless an instrument signed by a majority of the then Lot Owners has been filed for record in the Office of the Judge of Probate of Madison County, Alabama, agreeing to abolish or change said Protective Covenants and Restrictions in whole or in part.

16. Enforcement of these Protective Covenants and Restrictions shall be by legal proceedings against any person, or persons, or entity, or entities, violating or attempting to violate any Protective Covenant and Restriction either to restrain such violation and/or to recover damages.

17. Invalidity of any one or more of these Protective Covenants and Restrictions by judgment or court order shall in no wise effect any of the other Protective Covenants or Restrictions which shall remain in full force and effect.

IN WITNESS WHEREOF, the said WindHill Development Co., Inc., an Alabama Limited Liability Company, has caused these presents to be executed by its said partners on this the _____ day of _____, 1998.

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WINDHILL SUBDIVISION, MAGNOLIA SPRINGS ADDITION

EXTERIOR ARCHITECTURAL STANDARDS AND GUIDELINES

1. Architectural Drawings must be submitted for approval to the Architectural Control Committee prior to construction of residence.
2. Detailed specifications and Exterior Materials List must be submitted for approval to the Architectural control committee prior to construction.
3. Architectural Drawings must be submitted for approval to the Architectural Control Committee of any detached structures to be located on the property prior to construction of same.
4. All Mail Boxes will be uniform and will be selected by the Architectural Control Committee. Mail Boxes are to be installed and paid for by Lot Purchaser.
5. Location Plan of all structures and improvements on lot must be submitted for approval to the Architectural Control Committee prior to construction.
6. Front and side lawns must be sodded. Rear lawn can be seeded.
7. Swimming Pool Plans must be submitted for approval to the Architectural Control Committee prior to construction.
8. Tennis Courts or Basketball Courts are not permitted.
9. Construction Debris and rubbish, trash or garbage must be removed from the lot, thus keeping the lot tidy at all times. Streets must be kept free from all debris, dirt and mud at all times.
10. Landscape Plans must be submitted for approval to the Architectural Control Committee prior to installation.
11. Any fences, driveways, retaining walls or similar improvement plans must be submitted for approval to the Architectural control Committee prior to construction.
12. Sidewalks will be installed and paid for by the Lot Owner upon completion of construction of the residence and prior to final landscaping of lot.
13. Uniform tree plantings are required and will be set forth in a drawing of required plantings to be provided to each lot owner.
14. All residential dwellings must be constructed on crawl space foundations.
15. All chimneys must be of brick or rock construction.

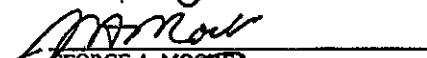
0925 0380

WINDHILL DEVELOPMENT CO., INC.


JAMES A. HOLMAN


MARY ELIZABETH HOLMAN


WILLIAM H. JOHNSTON, JR.


GEORGE A. MOORE

STATE OF ALABAMA)
COUNTY OF MADISON)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that JAMES A. HOLMAN, MARY ELIZABETH HOLMAN, WILLIAM H. JOHNSTON, JR., and GEORGE A. MOORE, whose names are signed to the foregoing Protective Covenants and Restrictions, and who are known to me, acknowledged before me on this day that, being informed of the contents of the foregoing Protective Covenants and Restrictions, they, as such general partners and with full authority, executed the same voluntarily for and as the act of the said WINDHILL DEVELOPMENT CO., INC., an Alabama Corporation.

GIVEN under my hand and official seal on this the 10th day of July, 1998.


Notary Public

My Commission Expires: 6/19/01

THIS INSTRUMENT PREPARED BY:
William H. Johnston, Jr., Esq.
Johnston, Johnston & Moore
400 Meridian Street, Suite 301
Huntsville, AL 35801

STATE OF ALA. MADISON CO.
I CERTIFY THIS INSTRUMENT
FILED ON
98 JUL 23 PM 4:38
NOTARY TAX HAS BEEN
PAID ON THIS INSTRUMENT
Shirley H. Davis
NOTARY OF PROBATE

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BOOK PAGE
0934 0921

STATE OF ALABAMA
COUNTY OF MADISON
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CLERK OF COURT
JAMES H. BOWEN

AMENDED DECLARATION OF PROTECTIVE COVENANTS
FOR
WINDHILL SUBDIVISION, MAGNOLIA SPRINGS ADDITION

THIS INSTRUMENT PREPARED BY:
DANIEL C. BOSWELL
WOLFE, JONES AND BOSWELL
905 Bob Wallace Ave., Suite 100
Huntsville, Alabama 35891
(205) 534-2205

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AMENDED DECLARATION OF PROTECTIVE COVENANTS
FOR
WINDHILL SUBDIVISION, MAGNOLIA SPRINGS ADDITION

BOOK PAGE
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WHEREAS, heretofore on the 23RD day of JULY, 1988, the undersigned WINDHILL DEVELOPMENT CO., INC., an Alabama Corporation as a previous owner, did promulgate and file for record a Declaration of Protective Covenants for WINDHILL SUBDIVISION, MAGNOLIA SPRINGS ADDITION which said Declaration of Protective Covenants is recorded in Deed Book 925, page 375 in the Office of the Judge of Probate of Madison County, Alabama.

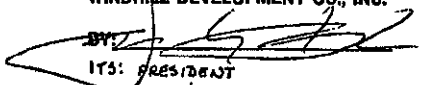
WHEREAS, RUDOLPH W. BECKERT and wife, CYNTHIA K. BECKERT, as current owners of LOT 19, MAGNOLIA SPRINGS PHASE ONE, as recorded in Deed Book 925, page 804, in the Probate records of Madison County, Alabama and HUNTER HOMES, L.L.C., an Alabama Limited Liability Company, as a current owner of Lots 9,10 and 24, MAGNOLIA SPRINGS PHASE ONE, as recorded in Deed Book 927, page 880, in the Probate records of Madison County, Alabama and WHEREAS, BRELAND HOMES, INC., an Alabama Corporation as a current owner of Lots 2,3,4,5,6,7,8,11,12 and 25 of MAGNOLIA SPRINGS PHASE ONE, as recorded in Deed Book 932, page 64, in the Probate records of Madison County, Alabama and SOUTHERN BANK OF COMMERCE as current lien holder, are desirous to amend the Protective Covenants as follows:

1. The subdivision name is hereby changed and will hereafter be known as MAGNOLIA SPRINGS SUBDIVISION PHASE 1.

2. To delete in its entirety the Declaration of Protective Covenants as recorded in Deed Book 925, page 375, in the Probate records of Madison County, Alabama and attached as Exhibit "A", and in lieu thereof adopt in its entirety those Protective Covenants as set forth in attached Exhibit "B".

IN WITNESS WHEREOF, the undersigned, being the previous owner and current owners and lien holder of the subdivision described herein, have executed this instrument and affixed the corporate seal this 13th day of November, 1998.

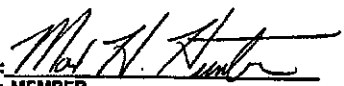
WINDHILL DEVELOPMENT CO., INC.

BY: 
ITS: PRESIDENT

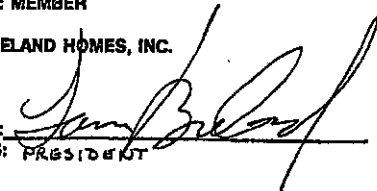
RUDOLPH W. BECKERT

CYNTHIA K. BECKERT

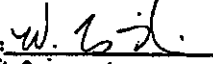
HUNTER HOMES, L.L.C.

BY: 
AS: MEMBER

BRELAND HOMES, INC.

BY: 
ITS: PRESIDENT

SOUTHERN BANK OF COMMERCE

BY: 
ITS: President

STATE OF ALABAMA

2001 PAGE

COUNTY OF MADISON

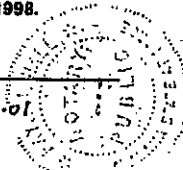
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I, the undersigned, a notary public in and for said county in said state, hereby certify that JAMES A. HOLMANN, as PRESIDENT of WINDHILL DEVELOPMENT CO., INC., is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and seal of office this 13th day of November 1998.

Jane M. Hall
Notary public:

My commission expires: 06-04-01



STATE OF ALABAMA

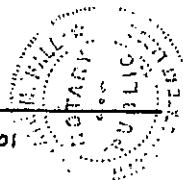
COUNTY OF MADISON

I, the undersigned, a Notary Public in and for said county and state, hereby certify that RUDOLPH W. BECKERT and wife CYNTHIA K. BECKERT, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this date that, being informed of the contents of this conveyance, they executed the same voluntarily on the day the same bears date.

THIS the 10th day of November, 1998.

Jane M. Hall
NOTARY PUBLIC -

COMMISSION EXPIRES: 06-04-01



STATE OF ALABAMA

COUNTY OF MADISON

I, the undersigned, a Notary Public in and for said county and state, hereby certify that Max H. Hunter, whose name is signed as manager of HUNTER HOMES, L.L.C. to the foregoing conveyance, and who is known to me, acknowledged before me on this date that, being informed of the contents of this conveyance, he executed the same voluntarily as and for the act of said corporation on the day the same bears date.

THIS the 12th day of November, 1998.

Jane M. Hall
NOTARY PUBLIC -

COMMISSION EXPIRES: 06-04-01



STATE OF ALABAMA
COUNTY OF MADISON

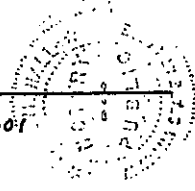
BOOK PAGE

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I, the undersigned, a Notary Public in and for said county and state, hereby certify that Louis W. Breland whose name is signed as PRESIDENT of BRELAND HOMES, INC. to the foregoing conveyance, and who is known to me, acknowledged before me on this date that, being informed of the contents of this conveyance, he executed the same voluntarily as and for the act of said corporation on the day the same bears date.

THIS the 11th day of November 1998.

John M. Hall
NOTARY PUBLIC -
COMMISSION EXPIRES: 06-04-01



STATE OF ALABAMA
COUNTY OF MADISON

I, the undersigned, a Notary Public in and for said county and state, hereby certify that Ernest Quinlan whose name is signed as PRESIDENT of SOUTHERN BANK OF COMMERCE to the foregoing conveyance, and who is known to me, acknowledged before me on this date that, being informed of the contents of this conveyance, he executed the same voluntarily as and for the act of said corporation on the day the same bears date.

THIS the 9 day of November 1998.

Delbert M. Hoffman
NOTARY PUBLIC -
COMMISSION EXPIRES:

MY COMMISSION EXPIRES 7-14-2002

THIS INSTRUMENT PREPARED BY:
DANIEL C. BOSWELL, WOLFE, JONES AND BOSWELL
905 BOB WALLACE AVENUE, SUITE 100
HUNTSVILLE, ALABAMA 35801

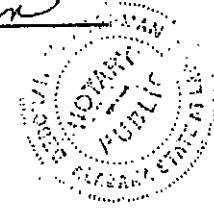


EXHIBIT A

0925-0373

BOOK OF PAGE

STATE OF ALABAMA

COUNTY OF MADISON

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93 JUL 23 PM 4:23
NOTARY PUBLIC
JAMES A. HOLMAN
JUL 23 1998

PROTECTIVE COVENANTS AND RESTRICTIONS

OF

WINDHILL SUBDIVISION, MAGNOLIA SPRINGS ADDITION

WHEREAS, WindHill Development Co., Inc., an Alabama Corporation, composed of William H. Johnston, Jr., George A. Moore, James A. Holman and Mary Elizabeth Holman (herein referred to as the "Developer"), is the owner of all of the real property described and embraced in what is known as WindHill Subdivision, Magnolia Springs Addition, (hereinafter referred to as the "Subdivision") according to the map or plat of said Subdivision dated June 14, 1998, and filed for record on the 20th day of July, 1998, and recorded in Plat Book 36 at Page 79 in the Office of the Judge of Probate of Madison County, Alabama (hereinafter referred to as the "Plat"); and

WHEREAS, Developer, as owner of the Subdivision, desires, before any of the lots or parcels of ground in the Subdivision are sold or conveyed to other persons, corporations, entities or firms, to establish and fix certain Protective Covenants and Restrictions as to the enjoyment and use of all of the lots and parcels of real property located within the Subdivision as said lots and parcels of real property are laid down and platted in the Plat of the Subdivision, and to make such restrictions a part of the dedication of the streets, alleys, and public ways so dedicated to the public by the filing of the Plat, and thereby protect all persons, corporations, entities or firms that may in the future become owners of said lots and parcels of real property, or any part thereof, and

WHEREAS, the Subdivision is a common and uniform plan and scheme of development of the real property embraced therein, and these Protective Covenants and Restrictions shall provide for orderly sale and development and enjoyment and use of the lots and parcels of real property within the Subdivision:

NOW, THEREFORE, Developer, by these presents, establishes and fixes the following Protective Covenants and Restrictions as to the future development, enjoyment and use of the lots and parcels of real property located in the Subdivision:

1. No lot or lots within the Subdivision (herein referred to as the "Lot") shall be used except for single family residential purposes. No structure shall be erected, altered, placed or permitted to remain on any Lot other than one (1) detached, single-family dwelling not to exceed two and one-half (2 1/2) stories in height and one (1) detached private garage for not more than two (2) vehicles, except for other structures incidental to, and requested for, proper residential use of a Lot, including, but not limited to, necessary outbuildings or storage sheds, as may be approved by the Architectural Control Committee as provided herein.

2. Developer has engaged the services of an Architectural Control Committee who shall establish exterior architectural standards and guidelines (herein referred to as the "Exterior Architectural Standards and Guidelines") for development of the Subdivision including, but not limited to dwellings, mailboxes, driveways and other structures located on lots (herein referred to as the "Improvements"). Developer shall cause the Architectural Control Committee to furnish each owner of a Lot (herein referred to as a "Lot Owner") with a copy of the Exterior Architectural Standards and Guidelines which shall be used by Lot Owner and his architect in designing the Improvements to be placed upon his particular Lot. Upon completion of the architectural plans of the Improvements by the Lot Owner's architect, the same shall be approved in writing by the Architectural Control Committee. Once so approved, said plans shall not be changed or deviated from without the further written approval of the Architectural Control Committee. Upon completion of the Improvements, the Architectural Control Committee shall

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certify in writing that the same are in accordance with the Exterior Architectural Standards and Guidelines and have been completed according to the plans.

The initial Architectural Control Committee may be replaced by Developer at Developer's sole discretion.

3. The ground floor area of the main structure of a residential dwelling erected or allowed to occupy or remain on any Lot, exclusive of one (1) story open porches and attached carports or garages, shall not be less than twenty five hundred (2,500) square feet for a one (1) story dwelling, or not less than eighteen hundred (1,800) square feet for a two (2) or two and one half (2 1/2) story dwelling.

No residential dwelling shall be erected or allowed to occupy or remain on any Lot which Lot has an area of less than eighteen thousand (18,000) square feet. Residential dwellings may be erected or placed on Lots as shown on the Plat; however, no more than one residential dwelling shall be allowed per Lot or combined Lots.

No Improvement shall be located on any Lot nearer to the front Lot line or nearer to the side street line than the minimum building setback line shown on the Plat. In any event, no Improvement shall be located on any Lot nearer than thirty-five (35) feet to the front Lot line, and on corner Lots, no Improvement shall be located nearer than thirty-five (35) feet to any side street line. No Improvement shall be located nearer than ten (10) feet to an interior Lot line and no Improvement shall be located nearer than forty (40) feet to the rear Lot line. Permitted detached rear yard accessory structures shall be set back at least five (5) feet from any utility and drainage easement line.

No Improvement that is one (1) to one and one-half (1 1/2) stories in height shall be located nearer than ten (10) feet to an interior Lot line. No Improvement that is between two (2) and two and one-half (2 1/2) stories in height shall be located nearer than twelve (12) feet to an interior Lot line. For the purposes of these Protective Covenants and Restrictions, eaves and steps shall not be considered as part of an Improvement, provided, however, that this shall not be construed to prevent any portion of an Improvement on a Lot to encroach upon another Lot. In the event the Architectural Control Committee shall decide, in its sole and absolute discretion, that strict enforcement of the setback lines and distances or other provisions contained within these protective Covenants and Restrictions would work an unnecessary hardship in any specific instance, then the Architectural Control Committee shall have the right to waive said setback line and distance requirements contained herein by filing written notice of such waiver in the Office of the Judge of Probate of Madison County, Alabama prior to the sale of any Lot affected thereby.

4. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the Plat and the dedication and granting of said easements shall not prevent the use thereof by any Lot Owner for any permitted purpose except for the erection or location of Improvements thereon.

Should the owner of two adjacent and contiguous Lots desire to build and maintain one residential dwelling on both Lots, said owner must obtain written approval of the Architectural Control Committee, including approval of any relocation or extension of any easement, in addition to any required vacation of said easement required by any governmental body. Said Lot restrictions established in these protective Covenants and Restrictions shall apply to the exterior side Lot lines of the combined Lot.

5. No noxious or offensive activity, or any commerce or trade, shall be carried on upon any Lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood of which the Subdivision forms a part.

6. No structure of a temporary character, basement, barn, garage, shack, tent, trailer, or other building shall be used on any Lot at any time as a residence, either temporarily or permanently.

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No temporary structure of any kind, occupied or unoccupied, shall be permitted upon any Lot during construction of a residential dwelling on said Lot without the prior written approval of the Architectural Control Committee.

7. No sign of any kind shall be displayed to the public view on any Lot except one sign of not more than five (5) square feet used by a builder or a realtor to advertise that the Lot is for sale or rent.

8. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

9. At no time shall any satellite receiving dish ever be permitted in the Subdivision or any part thereof.

10. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other domesticated household pets may be kept, provided they are not kept, bred or maintained for any commercial purpose.

11. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

12. No Improvement which is not structurally a part of the main dwelling, including but not limited to, necessary outbuildings or storage sheds, shall be permitted or located on any Lot unless the same first has been approved by the Architectural Control Committee, at the Lot Owner's expense, as to its location and exterior design to ensure harmony with the dwelling on the particular Lot, as well as dwellings and other Improvements on other Lots.

13. Portions of the Subdivision are designated on the Plat as "Common Area" (hereinafter referred to as the "Common Area"). The Common Area is intended to provide for open space, parks, playgrounds, or other recreational purposes, active or passive, relating to the Subdivision to offer recreational opportunity close to home, to enhance the appearance of the neighborhoods through preservation of natural green spaces, and to counteract the effects of urban congestion and monotony, and thus are intended to conserve local spots of natural beauty, to provide structure to neighborhood design, to add to the sense of spaciousness, to help promote the public health, safety and welfare of the persons residing nearby, and to aid in preserving property values.

The following provisions shall apply to the Common Area:

A. The Common Area shall be owned jointly by the Lot Owners, and shall be managed, cared for, maintained, repaired, and insured by WindHill Communities Homeowner's Association, Inc., an Alabama non-profit corporation (herein referred to as the "Association") as set forth herein.

B. The Association shall be composed of those persons or entities who hold and own a fee simple title in and to each and every Lot in the Subdivision (the Lot owners) as reflected by the records on file in the Office of the Judge of Probate of Madison County, Alabama, from time to time, but shall not include any person or entity who holds a mortgage or other lien on a Lot.

C. Membership in the Association is an express condition precedent to ownership of a Lot.

D. By acceptance of a deed to a Lot, a Lot Owner is deemed to have accepted membership in the Association.

E. Payment for management, care, maintenance, repair, and insurance of the Common Area is to be paid by the Association from a fund supplied by a

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mandatory assessment annual contribution from the Lot Owners which shall be secured by a lien on the Lot, which lien is hereby made expressly subject to existing restrictions, easements of record, applicable zoning ordinances, liens for ad valorem taxes, as well as expressly subject and subordinate to the lien and title of a lender holding a properly perfected first mortgage on any particular Lot. Said assessment lien may be enforced by any remedy available in law or in equity, including, but not limited to, foreclosure as provided by applicable law, and the By-Laws.

F. Procedure for governance of the Association and for the management, care, maintenance, repair and insurance of the Common Area, shall be as provided by the Articles of Incorporation (herein referred to as the "Articles of Incorporation"), and the By-Laws (herein referred to as the "By-Laws"), of the Association on record in the Office of the Judge of Probate of Madison County, Alabama, as may be amended from time to time, which said Articles of Incorporation and By-Laws are by this reference incorporated herein and made a part hereof.

G. For the year 1998 the Developer, at its expense, shall be solely responsible for the care and maintenance of the Common Area. Commencing January 1, 1999, and thereafter, said care and maintenance shall be the sole responsibility of the Association. Care and maintenance of the individual Lots within the Subdivision shall be the responsibility of the Developer until such time as the Lots are sold, at which time the care and maintenance of a particular Lot shall be the responsibility of the Lot Owner.

14. To protect the Subdivision as a common and uniform plan and scheme of development, uniform tree plantings (herein referred to as the "Required Plantings") are required both on individual Lots and the Common Area of the Subdivision as shown on a drawing of the Subdivision attached hereto as Exhibit "A" and by this reference incorporated herein. A Lot Owner shall be responsible for the care, maintenance and replacement of all Required Plantings located on his Lot; the care, maintenance and replacement of all Required Plantings located in the Common Area being the responsibility of the Association. Nothing in this provision shall be construed to prevent any Lot Owner from placing additional plantings on his Lot; provided, however, anything in these Protective Covenants and Restrictions to the contrary notwithstanding, all Required Plantings shall be maintained as shown on Exhibit "A" unless waived by a majority vote of the Board of Directors of the Association.

15. These Protective Covenants and Restrictions are to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from the date these Protective Covenants and Restrictions are filed for record in the office of the Judge of Probate of Madison County, Alabama, after which time said Protective Covenants and Restrictions shall be automatically extended for successive periods of ten (10) years each unless an instrument signed by a majority of the then Lot Owners has been filed for record in the Office of the Judge of Probate of Madison County, Alabama, agreeing to abolish or change said Protective Covenants and Restrictions in whole or in part.

16. Enforcement of these Protective Covenants and Restrictions shall be by legal proceedings against any person, or persons, or entity, or entities, violating or attempting to violate any Protective Covenant and Restriction either to restrain such violation and/or to recover damages.

17. Invalidation of any one or more of these Protective Covenants and Restrictions by judgment or court order shall in no wise effect any of the other Protective Covenants or Restrictions which shall remain in full force and effect.

IN WITNESS WHEREOF, the said WindHill Development Co., Inc., an Alabama Limited Liability Company, has caused these presents to be executed by its said partners on this the _____ day of _____, 1998.

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WINDHILL SUBDIVISION, MAGNOLIA SPRINGS ADDITION

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EXTERIOR ARCHITECTURAL STANDARDS AND GUIDELINES

1. Architectural Drawings must be submitted for approval to the Architectural Control Committee prior to construction of residence.
2. Detailed specifications and Exterior Materials List must be submitted for approval to the Architectural control committee prior to construction.
3. Architectural Drawings must be submitted for approval to the Architectural Control Committee of any detached structures to be located on the property prior to construction of same.
4. All Mail Boxes will be uniform and will be selected by the Architectural Control Committee. Mail Boxes are to be installed and paid for by Lot Purchaser.
5. Location Plan of all structures and improvements on lot must be submitted for approval to the Architectural Control Committee prior to construction.
6. Front and side lawns must be sodded. Rear lawn can be seeded.
7. Swimming Pool Plans must be submitted for approval to the Architectural Control Committee prior to construction.
8. Tennis Courts or Basketball Courts are not permitted.
9. Construction Debris and rubbish, trash or garbage must be removed from the lot, thus keeping the lot tidy at all times. Streets must be kept free from all debris, dirt and mud at all times.
10. Landscape Plans must be submitted for approval to the Architectural Control Committee prior to installation.
11. Any fences, driveways, retaining walls or similar improvement plans must be submitted for approval to the Architectural control Committee prior to construction.
12. Sidewalks will be installed and paid for by the Lot Owner upon completion of construction of the residence and prior to final landscaping of lot.
13. Uniform tree plantings are required and will be set forth in a drawing of required plantings to be provided to each lot owner.
14. All residential dwellings must be constructed on crawl space foundations.
15. All chimneys must be of brick or rock construction.

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WARRANTY DEED

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STATE OF ALABAMA
COUNTY OF MADISON

KNOW ALL MEN BY THESE PRESENTS: That in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration to the undersigned Grantor, Windhill Development Company, Inc. an Alabama Corporation, (herein referred to as Grantor) in hand paid by the Grantees herein, the receipt whereof is acknowledged, the said GRANTOR does hereby grant, bargain, sell and convey unto Breland Homes, Inc., an Alabama corporation, (herein referred to as Grantee), the following described real estate situated in Madison County, Alabama, to-wit:

Lots 2, 3, 4, 5, 6, 7, 8, 11, 12 and 25, according to the Plat or Survey of Magnolia Springs, Phase One, as recorded in Plat Book 36, Page 79, in the Office of the Judge of Probate of Madison County, Alabama.

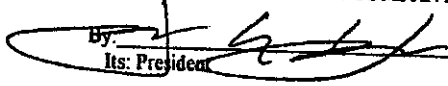
TO HAVE AND TO HOLD to the said Grantee, its successors and assigns forever.

And the said Grantor does for itself, its successors and assigns, covenant with said Grantees, its successors and assigns that it is lawfully seized in fee simple of said premises; that they are free from all encumbrances, unless otherwise noted above, except easements, restrictions, rights-of-way of record and ad valorem taxes for the current year and subsequent years; that it has a good right to sell and convey the same as aforesaid; that it will and its successors and assigns shall warrant and defend the same to the said Grantees, its successors and assigns forever, against the lawful claims of all persons.

IN WITNESS WHEREOF, the undersigned Grantor, by its duly authorized officer, has hereunto set its signature and seal this 27th day of October, 1998.

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WINDHILL DEVELOPMENT COMPANY, INC.

By: 
Its: President

STATE OF ALABAMA
MADISON COUNTY

I, the undersigned authority in and for said county in said state, hereby certify that James A. Holman, whose name as President of WINDHILL DEVELOPMENT COMPANY, INC. an Alabama Corporation, is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of this conveyance, he, as such officer and with full authority, executed the same voluntarily on the day the same bears date, for and as the act of the corporation.

GIVEN under my hand and seal of office this 27th day of October, 1998.


Notary Public Mark R. Hunter
My Commission Expires: 10/30/99

This Instrument Prepared By:
Mark R. Hunter, Esquire
JOHNSTON, JOHNSTON & MOORE
400 Meridian Street, Suite 301
Huntsville, Alabama 35801
256-533-5770

STATE OF ALABAMA
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MADISON COUNTY
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WARRANTY DEED

STATE OF ALABAMA
MADISON COUNTY

KNOW ALL MEN BY THESE PRESENTS: That in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration to the undersigned Grantor, WINDHILL DEVELOPMENT CO., INC., an Alabama corporation, (herein referred to as Grantor) in hand paid by the Grantees herein, the receipt whereof is acknowledged, the said WINDHILL DEVELOPMENT CO., INC. does hereby grant, bargain, sell and convey unto RUDOLPH W. BECKERT and wife, CYNTHIA K. BECKERT, (herein referred to as Grantees), for and during their joint lives, and upon the death of either of them, then to the survivor of them in fee simple, the following described real estate situated in Madison County, Alabama, to-wit:

Lot 19, according to the plat or survey of Magnolia Springs, Phase One, as recorded in Plat Book 36, Page 79, in the Office of the Judge of Probate of Madison County, Alabama.

TO HAVE AND TO HOLD to the said Grantees for and during their joint lives, and upon the death of either of them, then to the survivor of them in fee simple, and to the heirs and assigns of such survivor forever.

And the said Grantor does for itself, its successors and assigns, covenant with said Grantees, their heirs and assigns that it is lawfully seized in fee simple of said premises; that they are free from all encumbrances, unless otherwise noted above, except easements, restrictions, rights-of-way of record and ad valorem taxes for the current year; that it has a good right to sell and convey the same as aforesaid; that it will and its successors and assigns shall warrant and defend the same to the said Grantees, their heirs and assigns forever, against the lawful claims of all persons.

IN WITNESS WHEREOF, the undersigned Grantor, by its duly authorized officer, has hereunto set its signature and seal this 27th day of July, 1998.

WINDHILL DEVELOPMENT CO., INC.

By: [Signature]
Its: [Signature]

STATE OF ALABAMA
MADISON COUNTY

I, the undersigned authority in and for said county in said state, hereby certify that James A. Holman, whose name as President of WINDHILL DEVELOPMENT CO., INC., is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of this conveyance, he/she, as such officer and with full authority, executed the same voluntarily on the day the same bears date, for and as the act of the corporation.

GIVEN under my hand and seal of office this 27th day of July, 1998.

[Signature]
Notary Public
My Commission Expires: 8-29-99

This instrument Prepared By:
Mark R. Hunter, Esquire
JOHNSTON, JOHNSTON & MOORE
400 Madison Street, Suite 301
Huntsville, Alabama 35801

RECORDED
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STATE OF ALA. MADISON CO.
JUL 29 1998
BOOK 36 PAGE 79

Book 927 Page 45286

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STATE OF ALABAMA
MADISON COUNTY

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS: That in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration to the undersigned Grantor, WINDHILL DEVELOPMENT CO., INC., an Alabama corporation, (herein referred to as Grantor) in hand paid by the Grantee herein, the receipt whereof is acknowledged, the said WINDHILL DEVELOPMENT CO., INC. does hereby grant, bargain, sell and convey unto HUNTER HOMES, L.L.C., an Alabama Limited Liability Company, (herein referred to as Grantee), the following described real estate situated in Madison County, Alabama, to-wit:

Lots 9, 10, and 24, according to the plat or survey of Magnolia Springs, Phase One, as recorded in Plat Book 36, Page 79, in the Office of the Judge of Probate of Madison County, Alabama.

TO HAVE AND TO HOLD to the said Grantee, its successors and assigns forever.

And the said Grantor does for itself, its successors and assigns, covenant with said Grantee, its successors and assigns, that it is lawfully seized in fee simple of said premises; that they are free from all encumbrances, unless otherwise noted above, except easements, restrictions, rights-of-way of record and ad valorem taxes for the current year; that it has a good right to sell and convey the same as aforesaid; that it will, and its successors and assigns shall, warrant and defend the same to the said Grantee, its successors and assigns assigns, forever, against the lawful claims of all persons.

IN WITNESS WHEREOF, the undersigned Grantor, by its duly authorized officer, has hereunto set its signature and seal this 24th day of August, 1998.

WINDHILL DEVELOPMENT CO., INC.

By: James A. Holman
JAMES A. HOLMAN, President

STATE OF ALABAMA
MADISON COUNTY

I, the undersigned authority in and for said county in said state, hereby certify that James A. Holman, whose name as President of WINDHILL DEVELOPMENT CO., INC., is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of this conveyance, he, as such officer and with full authority, executed the same voluntarily on the day the same bears date, for and as the act of the corporation.

GIVEN under my hand and seal of office this 24th day of August, 1998.

James A. Holman
Notary Public

My Commission Expires: 8-29-99

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This Instrument Prepared By:
Mark R. Harter, Esquire
ANDREWS, ANDREWS & ASSOCIATES
400 Marietta Street, Suite 301
Huntsville, Alabama 35801

STATE OF ALA. MADISON CO
CLERK OF PROBATE
98 AUG 25 PM 3:20
JUDGE OF PROBATE

EXHIBIT "B"

DECLARATION
OF PROTECTIVE COVENANTS
FOR
MAGNOLIA SPRINGS SUBDIVISION, PHASE 1
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BOOK. PAGE
Phase 1

THIS DECLARATION is made on the date hereinafter set forth by Breland Homes, Inc., an Alabama corporation, (hereinafter sometimes called "Declarant").

BACKGROUND
STATEMENT

Declarant is the owner of the real property described in Article II, Section 1, of this Declaration.

Declarant desires to subject the real property described in Article II, Section 1, hereof to the provisions of this Declaration to create a residential community and to provide the mechanism for the subjecting of other real property to the provisions of this Declaration.

Declarant intends by this Declaration to impose mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of property subject to, or hereinafter subject to these protective covenants. Declarant desires to establish a method for the maintenance, preservation, use, and enjoyment of the property that is now or hereafter subjected to this Declaration.

Declarant hereby declares that the real property described in Article II, Section 1, of this Declaration, including the improvements constructed or to be constructed thereon, is hereby subjected to the provisions of this Declaration and shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments, and liens, hereinafter set forth, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the real property hereby or hereafter made subject hereto, and shall be binding on all persons having any right, title, or interest in all or any portion of the real property now or hereafter made subject hereto, their respective heirs, legal representatives, successors, successors-in-title, and assigns and shall inure to the benefit of each and every owner and occupant of all or any portion thereof.

ARTICLE I
Definitions

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Unless the context shall prohibit, certain words used in this Declaration shall have the definition meaning set forth as follows:

(a) "Association" shall mean and refer to Breland Homes, Inc., an Alabama corporation, membership corporation incorporated under the laws of the State of Alabama, its successors and assigns.

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

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

(d) "By-Laws" shall refer to the By-Laws of Magnolia Springs Subdivision, as such document may be amended from time to time.

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

(f) "Common Property" shall mean any and all real and personal property and easements and other interests therein, together with the facilities and improvements located thereon, now or hereafter owned by the Association for the common use and enjoyment of the Owners and Occupants, whether located within or without the boundaries of the Community.

(g) "Community" shall mean and refer to that certain real property and interests therein described in Exhibit "A", attached hereto, and (i) such additions thereto of all or any portion of the real property described in Exhibit "C", attached hereto, as may be made by Declarant (or its Mortgagee or transferee, as provided in the Declaration) by Supplementary Declaration; and (ii) such additions thereto of other real property as may be made by the Association by Supplementary Declaration.

(h) "Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing in the Community. Such standard may be more specifically determined by the Board of Directors of the Association and by committees required or permitted to be established pursuant to the Declaration and By-Laws. Such determination, however, must be consistent with the Community-Wide Standard originally established by the Declarant.

(i) "Declarant" shall mean and refer to Breland Homes, Inc., and its successors-in-title and assigns, provided any such successors-in-title or assign shall acquire for the purpose of development or sale all or any portion of the remaining undeveloped or unsold portions of real property described in Exhibit "A", attached hereto, or any adjacent land to Magnolia Springs Subdivision and provided further, in the instrument of conveyance to any such successor-in-title or assign, such successor-in-title or assign is designated as the "Declarant" hereunder by the grantor of such conveyance, which grantor shall be the "Declarant" hereunder at the time of such conveyance; provided, further, upon such designation of such successor Declarant, all rights of the former Declarant in and to such status as "Declarant" hereunder shall cease, it being understood that as to all of the property described in Exhibit "A" attached hereto, and the adjacent lands thereto, which is now or hereafter subjected to this Declaration, there shall be only one person or legal entity entitled to exercise the rights and powers of the "Declarant" hereunder at any one point in time.

(j) "Declaration" shall mean the Declaration of Protective Covenants for Magnolia Springs Subdivision as such document may be amended.

(k) "General Assessments" shall mean assessments levied for Association Expenses determined by the Board to benefit all Owners and Occupants. Such assessment shall be allocated among all Residences in the Community.

(l) "Magnolia Springs" shall mean Magnolia Springs Subdivision as recorded in Plat Book 36, Page 79, in the Office of the Judge of Probate of Madison County, Alabama.

(m) "Lake Lot Owner" shall mean the owner of any residence whose rear property line abuts a lake within the community (or a lake made available for the use and enjoyment of owners and occupants within the community) or whose rear property line would abut such lake if the strip of land between such property line and such lake, including, but not limited to common areas, was owned by the owner of such residence.

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(n) "Lot" shall mean the platted and subdivided land within Magnolia Springs Subdivision designated by Lot and Block to be sold and conveyed by Declarant to an Owner for the use by Owner of constructing a single family "Residence" on said lot as platted, subdivided and designated.

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

(p) "Member" shall mean a person that is a member of the Association as provided in the Declaration.

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

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

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

(t) "Owner" shall mean the record owner, whether one (1) or more Persons, of the fee simple title to any real property located within the Community, including contract sellers, excluding, however, any Person holding such interest merely as security for the performance or satisfaction of any obligation and excluding contract purchasers, their subsequent grantor, successor or assign.

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

(v) "Residence" shall mean a portion of the Community designated on an approved layout plan or subdivision plat, as more particularly described below, for any type of independent use and occupancy as a residence by a single family. For example, each single family detached home shall constitute a Residence; each condominium unit in a condominium development shall constitute a Residence; each Apartment Unit in an Apartment Complex shall constitute a Residence; and each townhome or cluster home unit in an attached or semi-attached housing development shall constitute a Residence. The foregoing examples are set out by way of illustration and not in limitation of the term "Residence". Residence shall include all portions of the land owned as well as any structure thereon, as described above. A Residence shall come into existence on the earliest date of the happening of any of the

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following events: (1) when a Certificate of Occupancy is issued by the proper governing authority; (2) in the case of a subdivision the expiration of two years from the date the subdivision is accepted for maintenance by the City of Madison, (unless made earlier by contract with owner).

(w) "Supplementary Declaration" shall mean an amendment to the Declaration subjecting additional property to the Declaration.

ARTICLE II Property Subject to This Declaration

Section 1. Property Hereby Subjected To This Declaration. The real property which is, by the recording of this Declaration, subject to the covenants and restrictions hereinafter set forth and which, by virtue of the recording of this Declaration, shall be held, transferred, sold, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to this Declaration is the real property described in Exhibit "C", attached hereto and by reference made a part hereof.

Section 2. Other Property. Only real property described in Section 1 of this Article II is hereby made subject to this Declaration; provided, however, by one (1) or more Supplementary Declarations, Declarant has the right, but not the obligation, to subject real property to this Declaration, as hereinafter provided in Article X.

ARTICLE III Association Membership and Voting Rights

Section 1. Membership. Every Owner shall be deemed to have a membership in the Magnolia Springs Subdivision Homeowner's Association, Inc., (hereinafter referred to as the "Association"). Membership shall be appurtenant to and may not be separated from ownership. The Association shall be comprised of the Owners and the Board it elects through its By-Laws as it may establish. By-Laws by the Owners must be established within one (1) year that Magnolia Springs Subdivision is platted and recorded at the Office of the Judge of Probate of Madison County, Alabama. The initial Board of Directors shall be comprised of LOUIS BRELAND, LANE HOLLIS, SHAUN FAIRBURN, XXXXXXXXXXXXXXXXXXXX and XXXXXXXXXXXXXXXXXXXX, who shall remain on said

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Board until all lots in Magnolia Springs Subdivision are sold at which time the Association shall be called to hold a special election to elect new Board members as per the By-Laws of Magnolia Springs Homeowner's Association, Inc.

Section 2. Voting. Owners shall be entitled to one (1) vote for each Residence owned. When more than one (1) Person holds an ownership interest in any Residence, the vote for such Residence shall be exercised as those Owners themselves determine. In the event of a dispute, the vote shall be suspended if more than one (1) Person seeks to exercise it. Those Owners of property, if any, which is exempt from assessments as provided in Article IV, Section 11, hereof are Members of the Association and are subject to the provisions of this Declaration, but are not Owners of Residences and shall not, therefore, be entitled to vote.

An Owner's right to vote may be suspended as provided in Article XII, Section 2, of this Declaration.

ARTICLE IV

Assessments

Section 1. Purpose of Assessment. The assessments provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefits, and enjoyment of the Owners and Occupants in the Community including the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors.

Section 2. Type of Assessments. Each Owner of any Residence, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association: (a) General Assessments; (b) Special assessments which are such assessments to be established and collected as hereinafter provided in Article IV, Section 5; and (c) Specific assessments against any particular Residence which are established pursuant to the terms of this Declaration, including, but not limited to, those assessments established by Article IV, Section 10, and Article V, Section 2, hereof and reasonable fines as may be imposed in accordance with the terms of the Declaration and By-Laws. General Assessments shall be \$200.00 per Calendar Year due on October 1 of each Calendar Year payable in advance. The first year's General Assessment shall be due at the closing of the sale of a lot to an Owner with the General Assessment being prorated through October 1 of that Calendar Year.

Section 3. Creation of Lien and Personal Obligation for Assessments. All assessments, with a late charge as set forth in Article IV, Section 7, costs, and reasonable attorney's fees actually incurred shall be a charge on the land and shall be a continuing lien upon the Residence against which each assessment is made unless such assessment is paid within 30 days such assessment is due, which due date is set forth in Article IV, Section 2, or as may be otherwise determined by the Board when special or specific assessment are made pursuant to Article IV, Section 2, and Article IV, Section 5. Each such assessment, together with late charges, interest, costs, and reasonable attorney's fees actually incurred, shall also be the personal obligations of the Person who was the Owner of such Residence at the time the assessment fell due. Each such Owner shall be personally liable for his or her portion of each assessment coming due while he or she is the Owner of a Residence, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of its grantor shall not apply to any first Mortgage holder taking title through foreclosure proceedings or deed in lieu of foreclosure.

General Assessments and other assessments, unless otherwise provided by the Board, shall be paid in annual, semi-annual, or quarterly installments as the Board determines.

Section 4. Budget. It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during the coming year, which may include a capital contribution or reserve. The Board shall cause the budget and the assessments to be levied against each residence for the following year to be delivered to each Residence Owner at least thirty (30) days prior to the end of the current calendar year. The Board may not, without the consent of Declarant (so long as Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article X hereof) and the vote or written assent of at least a Majority of the total Association vote entitled to vote thereon, impose a General Assessment per Residence which is more than one hundred twenty. (120%) percent of the General Assessment for the immediately preceding fiscal year. In the event that the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the current year shall continue for the succeeding year.

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Section 5. Special Assessments. In addition to the other assessments authorized herein, the Board may levy special assessments in any year. So long as the total amount of special assessments allocable to each Residence does not exceed the amount of the current General Assessment in any one (1) calendar year, the Board may impose the special assessment. Any special assessment which would cause the amount of special assessments allocable to any Residence to exceed this limitation shall be effective only if approved by a majority of the total Association vote entitled to vote thereon and, so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article X hereof, and with the consent of Declarant. Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

Section 6. Lien for Assessments. All sums assessed against any property subject to this Declaration pursuant to this Declaration, together with late charges, interest, costs, and reasonable attorney's fees actually incurred, as provided herein, shall be secured by a lien on such property in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such property, except for (a) liens of ad valorem taxes; and (b) liens for all sums unpaid on a first Mortgage.

All other Persons acquiring liens or encumbrances on any property subject to this Declaration after this Declaration shall have been recorded in the records of the Office of the Judge of Probate, Madison County, Alabama shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

Section 7. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessments which are not paid in full by the date specified by the Board, ("due date"), shall be delinquent. Any assessment delinquent shall incur a late charge of five and no/100 (\$5.00) dollars, per day, or in such amount as the Board may from time to time determine. If the assessment is not paid when due, a lien, as herein provided, shall attach and, in addition, the lien shall include the late charge, interest on the principal amount due, and all late charges from the date first due and payable, all costs of collection, reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law. In the event that the assessment remains unpaid after ninety (90) days, the Association may, as the Board shall

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determine, institute suit to collect such amounts and to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Association and its agents the right and power to bring all actions against him or her, personally, for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting through the Board and on behalf of the Owners, shall have the power to bid at any foreclosure sale or to acquire, hold, lease, mortgage, or convey foreclosed property. No Owner may waive or otherwise exempt himself from liability for the assessments provided for herein, including, by way of illustration, but not limitation, by non-use of Common Property, or abandonment of the Residence. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the By-Laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay assessments being a separate and independent covenant on the part of each Owner.

All payments shall be applied first to costs and attorney's fees, then to late charges, then to interest and then to delinquent assessments.

Section 8. Date of Commencement of Assessments. An Owner shall become subject to assessment hereunder at the time of purchase of a lot in Magnolia Springs Subdivision and as set forth in Article IV, Section 2. The first General Assessment shall be adjusted according to the number of months remaining in the calendar year during which the Owner became subject to assessment.

Section 9. Assessment Obligation of Declarant; Advance Payment. After the commencement of annual assessment payments as to any Residence, Declarant, on behalf of itself and its successors and assigns, covenants and agrees to pay the full amount of the assessments provided herein for each existing Residence that it owns after one year from the date of the first conveyance to an Owner. The Board is specifically authorized to enter into such advance payment contracts with Declarant or other entities as may be mutually agreed to for the payment of some portion of the Association Expenses; provided, however, the

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Veterans Administration shall be advised of and approved by the Veterans Administration if such contract entered into between the Declarant and association if the Veterans Administration is guaranteeing any Mortgage in the Community. Such contract or contracts shall be for the benefits of and enforceable by the Association.

Section 10. Specific Assessments. The Board shall have the power to specifically assess pursuant to this Section as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. The Board may specifically assess Residences for the following expenses, except for expenses incurred for maintenance and repair of items which are the maintenance responsibility of the Association as provided herein:

- (a) Expenses of the Association which benefit less than all of the Residences may be specifically assessed equitably among all of the Residences which are benefited according to the benefit received.
- (b) Expenses of the Association which benefit all Residences, but which do not provide an equal benefit to all Residences, may be specifically assessed equitably among all Residences according to the benefit received.

Section 11. Exempt Property. The following property shall be exempt from General Assessments and special and specific assessments:

- (a) all property dedicated to and accepted by any governmental authority or public utility, including, without limitation, public schools, public streets, public parks, roads, rights-of-way, streets and easements; and
- (b) all property owned by non-profit organizations and restricted for use as private schools or churches; provided, however, the availability of the exemption for such non-profit organizations is contingent upon prior approval by the Board.

Section 12. Waiver of Assessments. The Declarant and/or Board reserves the right to waive any assessment as may come due from an owner for special circumstances shown.

ARTICLE V

Maintenance: Conveyance of Common Property 934 0944
by Declarant to Association

Section 1. Association's Maintenance Responsibility. The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and improvements situated on the Common Property. In addition, if the following properly exists in the Community, the Association may, as determined by the Board, maintain part or all of such property, regardless of whether it is Common Property, Community hiking and biking trails; Community dock areas; grass and other landscaping along dedicated rights-of-way; sedimentation ponds; Community entrance features; and lakes and dams.

The Association shall also have the right, but not the obligation, to maintain and provide services for other property not owned by the Association, whether located within or without the boundaries of the Community, and to enter into leases, easements and covenants and to share costs agreements regarding such property (and any other property) where the Board has determined that this would benefit Owners.

The foregoing maintenance costs shall be assessed as a part of the General Assessment or specific assessments, as determined by the Board in accordance with this Declaration.

The foregoing maintenance shall be performed consistent with the Community-Wide Standard.

Section 2. Owner's Maintenance Responsibility. Each Owner shall maintain or cause to be maintained in a safe, clean and attractive condition all property subject to this Declaration which is owned directly or indirectly by such Owner in a manner consistent with the Community-Wide Standard and this Declaration. Such maintenance obligation shall include, without limitation, the following: Prompt removal of all litter, trash, refuse, and waste; lawn mowing on a regular basis; tree and shrub pruning; watering landscaped areas; keeping improvements, exterior lighting, and maintenance facilities in good repair and working order; keeping lawn and garden areas alive, free of weeds, and attractive; keeping driveways in good repair; complying with all governmental health and police requirements; and repair of exterior damages to improvements. Lake Lot Owners shall, in addition,

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maintain as described above the property located between the lake elevation and the property line of such Owners.

In the event that the Board determines that (a) any Owner or designee of the Owner, as designee is defined below, has failed or refused to discharge properly his obligations with regard to the maintenance, repair or replacement of items for which he is responsible hereunder; or (b) that the need for maintenance, repair, or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, his or her family, guests, lessees, invitees, or designee then, the Association may perform the repair, replacement or maintenance and shall, except in the event of any emergency situation, give the Owner or designee written notice of the Association's intent to provide such necessary maintenance, repair, or replacement, at the Owner's or the Owner's designee's sole cost and expense.

The notice shall set forth with reasonable particularity the maintenance, repairs, or replacement deemed necessary. The Owner or his designee shall have ten (10) days within which to complete such maintenance, repair, or replacement, or, in the event that such maintenance, repair, or replacement is not capable of completion within a ten (10) day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair, or replacement at Owner's sole cost and expense, and all costs shall be treated as a specific assessment against the Owner and the property owned by the Owner.

Section 3. Party Walls and Party Fences. Each wall or fence built as a part of the original construction of the Residences which shall serve and separate any two (2) adjoining Residences shall constitute a party wall or fence and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

The cost of reasonable repair and maintenance of a party wall or fence shall be shared by the Owners who make use of the wall or fence in equal proportions.

In the event of any dispute arising concerning a party wall or fence, or under the provisions of this Section, each party shall appoint one (1) arbitrator. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefor by the Board, the Board shall appoint an arbitrator for the refusing party. The arbitrators thus appointed shall appoint one (1) additional arbitrator and the decision by a majority of all three (3) arbitrators

shall be binding upon the parties and shall be a condition precedent to any right of legal action that either party may have against the other.

Section 4. Conveyance of Common Property by Declarant to Association. The Declarant may transfer or convey to the Association any personal property and any improved or unimproved real property, leasehold, easement, or other property interest which is or may be subjected to the terms of this Declaration. Such conveyance shall be accepted by the Association, and the property shall thereafter be Common Property to be maintained by the Association. Declarant shall have the right, without limitation, to include Lakes and Dams in the property that may be conveyed by Declarant and which shall be accepted by the Association.

Section 5. Additional Improvements. Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section including, without limitation, dredging or otherwise removing silt from any lake that may be conveyed.

ARTICLE VI Use Restrictions and Rules

Section 1. General. This Article, beginning at Section 2, sets out certain use restrictions which must be complied with by all Owners and Occupants. These use restrictions may only be amended in the manner provided in Article XIII, Section 4, hereof regarding amendment of this Declaration. In addition, the Board, by a two-thirds (2/3) vote, may, from time to time, without consent of the Members, promulgate, modify, or delete other use restrictions and rules and regulations applicable to the Community not in conflict with Article VI, Sections 2 - 40 set forth hereinbelow. This authority shall include, but shall not be limited to, the right to limit the type and size of vehicles within the Community and to set the maximum and minimum speeds of vehicles on private streets within the Community and to impose all other necessary traffic and parking regulations and to restrict the maximum noise levels of vehicles in the Community. The Board may also restrict certain portions of the recreational facilities administered by the Association to adults only. Such use restrictions and rules shall be distributed to all Owners and Occupants prior to the date that they are to become effective and shall thereafter be binding upon all Owners and Occupants until and unless overruled, canceled, or modified in a regular or special meeting by a Majority of the

total Association vote entitled to vote thereon and, so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article X hereof, the consent of Declarant.

Section 2. Beginning Date for Construction of Homes. The Owners, or their subsequent grantors, successors or assigns, shall begin construction of single family homes on the lot within two (2) years from the date the lot was originally acquired from Breland Homes, Inc. It is deemed that construction shall have begun when a building permit is obtained from the City of Madison by the Owner, or his subsequent grantors, successors or assigns. If the Owner fails to begin construction of a single family home on the lot within said time then, in that event, the Declarant shall have the right or option to repurchase the lot at the same purchase price as originally paid by the Owner or the Owner's grantee to Breland Homes, Inc.

Section 3. Residential Use. All Residences shall be used for single-family residential purposes exclusively. No business or business activity shall be carried on in or upon any Residence at any time except with the written approval of the Board. Leasing of a Residence shall not be considered a business or business activity. However, the Board may permit Residence to be used for business purposes so long as such business, in the sole discretion of the Board, does not otherwise violate the provisions of the Declaration or By-Laws, does not create a disturbance. The Board may issue rules regarding permitted business activities. Residences of more than two stories are prohibited.

Section 4. Signs. No sign of any kind shall be erected by an Owner or Occupant within the Community without the prior written consent of the Architectural Control Committee. Notwithstanding the foregoing, the Board shall have the right to erect reasonable and appropriate signs, and "For Sale" and "For Rent" signs no greater than 5 sq. ft. may be erected upon any Residence. The provisions of this Section shall not apply to any Person holding a Mortgage who become the Owner of any Residence as purchaser at a judicial or foreclosure sale conducted with respect to a first Mortgage or as transferee pursuant to any proceeding in lieu thereof.

Section 5. Vehicles and Garages. The term "vehicles," as used herein, shall include, without limitation, motor homes, boats, trailers, motorcycles, minibikes, scooters, go-carts, trucks, campers, buses, vans, and automobiles. Unless and except to the extent that the Occupants of a Residence shall have more vehicles than the number of parking areas serving

their Residence, all vehicles shall be parked in such parking areas. Where the Residence contains a garage, "parking areas" shall refer to the number of garage parking spaces.

No vehicle may be left upon any portion of the Community, except in a garage or other area designated by the Board, for a period longer than five (5) days if it is unlicensed or if it is in a condition such that it is incapable of being operated upon the public highways.

After such five (5) day period, such vehicle shall be considered a nuisance and may be removed from the Community. Any towed vehicle, boat, recreational vehicle, motor home, or mobile home regularly stored in the Community or temporarily kept in the Community, except if kept in a garage or other area designated by the Board, for periods longer than twenty-four (24) hours each shall be considered a nuisance and may be removed from the Community. Trucks with mounted campers which are an Owner's or Occupant's primary means of transportation shall not be considered recreational vehicles, provided they are used on a regular basis for transportation and the camper is stored out of public view upon removal.

No motorized vehicles shall be permitted on pathways or unpaved Common Property except for public safety vehicles and vehicles authorized by the Board.

All single-family detached Residences shall contain, as a minimum, a two-car garage; carports shall not be permitted. Garage doors shall be kept closed at all times, except during times of ingress and egress from the garage. All detached garages must be connected to the dwelling structure by a breezeway or covered walkway, unless otherwise approved by Architectural Control Committee.

Section 6. Leasing. Residences may be leased for residential purposes. All leases shall have a minimum term of six (6) months. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration, By-Laws, use restrictions, and rules and regulations of the Association. The lease shall also obligate the tenant to comply with the foregoing and shall provide that in the event of noncompliance, the Board, in addition to any other remedies available to it, may evict the tenant on behalf of the Owner and specifically assess all costs associated therewith against the Owner and the Owner's property.

Section 7. Occupants Bound. All provisions of the Declaration, By-Laws, and of any rules and regulations, use restrictions or design guidelines promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants even though Occupants are not specifically mentioned. Fines may

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be levied against Owners or Occupants. If a fine is first levied against an Occupant and is not paid timely, the fine may then be additionally levied against the Owner.

Section 8. Animals and Pets. No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Residence, with the exception of dogs, cats, or other usual and common household pets in reasonable number, as determined by the Board; provided, however, those pets which are permitted to roam free, or in the sole discretion of the Board, endanger health, make objectionable noise, (including, but not limited to barking dogs) or constitute a nuisance or inconvenience to the Association members or Occupants or the owner of any property located adjacent to the Community may be removed by the Board. No pets shall be kept, bred or maintained for any commercial purpose. Dogs which are household pets shall at all times whenever they are outside a Residence be on a leash or otherwise confined in a manner acceptable to the Board. Without prejudice to the Board's right to remove any such household pets, no household pet that has caused damage or injury may be walked in the Community. Animal control authorities, shall be permitted to enter the Community to patrol and remove pets. Pets shall be registered, licensed and inoculated as required by law. No more than 2 outside pets per household unless otherwise approved by the A.C.C.

Section 9. Nuisance. It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her property. No property within the Community shall be used, in whole or in part, for the storage of any property or thing that will cause such Residence to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on within the Community, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person using any property within the Community. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community.

Section 10. Unsightly or Unkempt Conditions. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken in any part of the Community.

Section 11. Architectural Standards. No exterior construction, alteration, addition, or erection of any nature whatsoever shall be commenced or placed upon any part of the Community, except such as is installed by the Declarant, or as is approved in accordance with this Section, or as is otherwise expressly permitted herein. Such exterior construction, etc. (etc. meaning alteration, addition or erection of any nature whatsoever), shall be in accordance with the Architectural Restrictions as set forth in Exhibit B, attached hereto, and made a part of these Covenants. No exterior construction, addition erection, or alteration shall be made unless and until plans and specifications showing at least the nature, kind, shape, height, materials, and location, and in compliance with the Architectural Restrictions, shall have been submitted in writing to and approved by an Architectural Control Committee consisting of Louis Breland, Shawn T. Fairburn, and W. Lane Hollis. Such Architectural Control Committee shall remain in existence and be comprised of these individuals, or their personal appointee, until all lots are sold in the Magnolia Springs Subdivision and homes as per the Architectural Restrictions are constructed and completed on said lots. The following items, without limitation, will be submitted to the Architectural Control Committee for new home construction: house plans, site plans, landscaping plans, and exterior color and material schedule. The Architectural Control Committee may employ architects, engineers, or other Persons necessary to enable the Committee to perform its review. The Architectural Control Committee may, from time to time, delegate any of its rights or responsibilities hereunder to one (1) or more duly licensed architects or other qualified persons, which shall have full authority to act on behalf of the committee for all matters delegated and in the event of such delegation, the applicant shall be required to pay any fees charged by such architects or other qualified persons.

In the event that the Architectural Control Committee fails to approve or to disapprove submitted plans and specifications within thirty (30) days after the plans and specifications have been submitted to it, approval will not be required, and this Section will be deemed to have been fully complied with. As a condition of approval under this Section, an

Owner, on behalf of himself and his successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement, and insurance to and on any change, modification, addition, or alteration. In the discretion of the Architectural Control Committee, an Owner may be made to verify such condition of approval by a recordable written instrument acknowledged by such Owner on behalf of himself and his successors-in-interest. The Architectural Control Committee shall be the sole arbiter of such plans and may withhold approval for any reason, including purely aesthetic considerations, and it shall be entitled to stop any construction in violation of these restrictions. Any member of the Architectural Control Committee or Board, or its representatives, shall have the right, during reasonable hours and after reasonable notice, to enter upon any property to inspect for the purpose of ascertaining whether or not these restrictive covenants have been or are being complied with. Such Person or Persons shall not be deemed guilty of trespass by reason of such entry. In addition to any other remedies available to the Association, in the event of noncompliance with this Section, the Board may, as provided in Article XIII, Section 1, hereof, record in the appropriate land records a notice of violation naming the violating Owner.

Plans and specifications are not approved for engineering or structural design or quality of materials, and by approving such plans and specifications neither the Architectural Control Committee, the members thereof, nor the Association assumes liability or responsibility therefore, nor for any defect in any structure constructed from such plans and specifications. Neither Declarant, the Association, the Architectural Control Committee, the Board, nor the officers, directors, members, employees, and agents of any of them shall be liable in damages to anyone submitting plans and specifications to any of them for approval, or to any Owner of property affected by these restrictions by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every Person who submits plans or specifications and every Owner agrees that he will not bring any action or suit against Declarant, the Association, the Architectural Control Committee, the Board, or the officers, directors, members, employees, and agents of any of them to recover any such damages and hereby releases, remises, quit-claims, and covenants not to sue for all claims, demands, and causes of action arising out of or in connection with any judgment, negligence, or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands, and causes of action not known at the time the release is given.

Section 12. Antennas. No exterior antennas of any kind shall be placed, allowed, or maintained upon any portion of the Community, including any Residence without the prior written consent of the Board or its designee. No free standing antennas whatsoever shall be placed on any Residence. The Board or its designee may approve the installation of radio antennas which do not protrude above the roof line of the Residence at its highest point and are not visible from the street in front of the Residence. Each Owner and Occupant acknowledges that this provision benefits all Owners and Occupants and each Owner and Occupant agrees to comply with this provision despite the fact that the erection of an outdoor antenna or similar device would be the most cost effective way to transmit or receive the signals sought to be transmitted or received.

Section 13. Tree Removal. No trees shall be removed without the express consent of the Board or its designee, except for (a) diseased or dead trees; (b) trees less than six (6) inches in diameter; (c) trees needing to be removed for safety reasons; or (d) trees in the immediate location of building approved by the Architectural Control Committee.

Section 14. Drainage. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or Occupant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains except with the permission of the Architectural Review Committee. Declarant hereby reserves a perpetual easement across all Community property for the purpose of altering drainage and water flow. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

Section 15. Site Distance at Intersections. All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where this would create a traffic or sight problem.

Section 16. Clotheslines, Garbage Cans, Woodpiles, Etc. All clotheslines, garbage cans, woodpiles, swimming pool pumps, filters and related equipment, air conditioning compressors and other similar items shall be located or screened so as to be concealed from view of neighboring streets and property. All rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate. Declarant, however, hereby expressly

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reserves the right to dump and bury rocks and trees on property within the Community as needed for efficient construction and to allow developers and builders within the Community to bury rocks and trees removed from a building site on such building site. Trash, garbage, debris, or other waste matter of any kind may not be burned or buried within the Community, except when done during the normal construction of a residence or by Declarant.

Section 17. Subdivision of Residence. No Residence shall be subdivided or its boundary lines changed except with the prior written approval of the Board or its designee. Declarant, however, hereby expressly reserves the right to replat any Residence or Residences owned by Declarant during the time in which Declarant may annex property. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations.

Section 18. Guns. The use of firearms in the Community is prohibited. The term "firearms" includes "B-B" guns, pellet guns, and firearms of all types.

Section 19. Fencing. No fence or fencing type barrier of any kind shall be placed, erected, allowed, or maintained upon any portion of the Community, including any Residence, without the prior written consent of the Architectural Control Committee while such Committee is in existence or the Board or its designee after the Architectural Control Committee ceases to exist as indicated at Article VI, Section 10. Fence will be compatible with the home and have architectural interest and shall meet the Architectural Restrictions. Flat wood fencing that does not have architectural interest and visual relief will not be approved. No fence will be higher than six feet from the final ground level to the top of the fence except by special permission of the architectural control committee. The exterior side of the fence has to be finished, specifically the structural characteristics must be covered. Within the construction of the fence there must be some brick or stone masonry, and stone or brick is the preferred material to use at the corner posts. No roughsawn board of any kind will be used in the fence. All wood will be painted or opaque stained and maintained in a satisfactory manner. No chain link fence will be allowed within the subdivision. Fences regardless of construction, will not be permitted any nearer, to front lot line than the rear most corner of the dwelling except in special circumstances.

Except for approved privacy fences erected around pools and patios, there shall be no solid fences erected in the back yards of residences of Lake Lot Owners, nor any other

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structure closer than forty (40) feet to the back lot line. The intent of this regulation as related to Lake Lot Owners is to present an aesthetically pleasing, "non-walled off" appearance from, to, and in the vicinity of Lakes. With approval of the Board, a four (4) feet high wrought iron fence may be erected.

Section 20. Lakes. This Section, Article XII, Sections 5 and 7 of this Declaration, and rules, use restrictions and design guidelines issued by the Board or its designee shall govern the use of such lakes as may exist in the Community or such lakes as are made available for the use of all Owners and Occupants in the Community and activities related thereto. Fishing shall be permitted so long as a license is obtained from the appropriate governmental authority. Swimming, ice skating and water skiing shall not be permitted, except as specifically approved by the Board. Unless approved by the Board or its designee, no Owner may construct a dock. Retaining walls and similar structures shall not be installed without the prior written approval of the Board or its designee. Except as may be approved by the Board or its designee, boats shall not be permitted on the lakes.

Section 21. Utility Lines. No overhead utility lines, including lines for cable television, shall be permitted within the Community, except for temporary lines as required during construction and lines installed by or at the request of Declarant.

Section 22. Air-Conditioning Units. Except as may be permitted by the Board or its designee, no window air conditioning units may be installed.

Section 23. Lighting. Except for approved lighting as originally installed on a Residence, exterior lighting visible from the street shall not be permitted, except for (a) two (2) decorative post lights; (b) a street light in conformity with an established street lighting program for the Community; (c) seasonal decorative lights at Christmas; or (d) front house illumination of model homes.

Section 24. Artificial Vegetation, Exterior Sculpture, and Similar Items. No artificial vegetation shall be permitted on the exterior of any property. Exterior sculpture, fountains, flags, and similar items must be approved by the Board or its designee.

Section 25. Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless they are an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the Architectural Control Committee or the Board, or its designee.

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Section 26. Above-Ground Swimming Pools. Except as may be permitted by the Board or its designee, above ground swimming pools shall not be erected.

Section 27. Driveways. Except as may be permitted by the Board or its designee, driveways shall be constructed with concrete.

Section 28. Exteriors. Except as may be permitted by the Board or its designee, the exterior of all improvements including, without limitation, Residences must be repainted in a color used in the original construction of Residences within the Community. No Residence exterior shall be constructed of untreated wood. All such wood exteriors must be painted or specifically approved by the Architectural Control Committee.

Section 29. Window Coverings. The portion of all window coverings visible from the exterior of any Residence shall be white or off-white or neutral unless otherwise prior approved by the Board or its designee. Aluminum foil on window panes, mirrored or reflective glass is not allowed.

Section 30. Chimneys. All chimneys that are on the exterior wall must have either brick or stone on the three exterior sides of the chimney. Interior chimneys may have either a siding or stucco product on all four sides of the chimney.

Section 31. Mailboxes. Only approved mailboxes can be installed in the community as per the Architectural Restrictions.

Section 32. Landscaping. The purpose of this restriction is to promote landscape development of single family residential lots that will preserve and appreciate the value of the development by promoting a high quality, cohesive level of landscaping. These requirements may be altered or amended at the discretion of the architectural control committee.

Guideline for Landscaping Planning:

- (a) Existing vegetation and trees should be preserved whenever possible to provide screening and lend an established feeling to the Community.
- (b) Shrubs should be well distributed, but not necessarily evenly spaced. Shrubs may be used for screening and to minimize the visual impact of driveways and parking areas.
- (c) Earth berms may be used to create a sense of enclosure and to screen driveways, especially if planted with shrubbery.
- (d) Unified mulched planting beds edged in materials such as brick, steel or wood look near longer and their shape is preserved.

(e) Exterior building material colors should be considered when selecting flowering trees and shrubs so that colors will not compete with or negate each other.

(f) All trees greater than two inches in diameter at breast heights shall be preserved, unless removal of them is part of an approved plan.

(g) The lot shall be completely landscaped. However, planned natural areas will be allowed provided that the lawn and the natural area form a cohesive whole.

(h) Driveways shall coordinate with topography and existing vegetation to preserve all trees greater than two inches in diameter at breast height. "Straight-in" driveways should be avoided.

(i) Each lot owner must submit a landscaping plan and must completely install such plan within ninety days of occupying the residence. Additionally, each lot owner must maintain his lawn in as good or better condition than his original landscaping plan. It is not the intention of the architectural control committee to monitor every planting in Magnolia Springs Subdivision but if a lawn, at the sole discretion of the architectural control committee, has deteriorated and/or was never installed properly, then the lot owner will be required to bring his lot into compliance with the guidelines.

Section 33. Screening of Heating and Cooling Units. All exterior heat and air conditioning compressors or air handlers must be screened from view. This can be accomplished with either vegetation, brick and/or stone. If vegetation is used it must create a walled off effect. The screening is encouraged on all sides of the equipment but is required on the front and side of the equipment.

Section 34. Storage Tanks. Any storage tank must be approved by the architectural control committee and, if approved, must be buried, or, if they are less than fifty-gallon capacity, may, with the architectural control committee's approval, be installed above ground, if properly screened.

Section 35. Corner Lots. All corner lots shall be built either parallel to both streets and in the case the residence is built parallel to one of the streets, the garage must face the interior lot so that no garage will face any street at a ninety-degree angle.

Section 36. Basketball Goals. No basketball goals may be erected or constructed on the front of any lot. Only Board approved basketball goals may be erected or constructed on the rear portion of any lot.

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Section 37. Specific Subdivision Restrictions as to Magnolia Springs Subdivision.

(i) All dwellings and permitted accessory buildings constructed on the lots of said subdivision shall have an exterior with approved natural materials and detailed specifications, and Exterior Materials List must be submitted for approval to the Architectural Control Committee prior to construction.

(ii) All dwellings shall have side or rear entry garages. No front entry garages will be permitted. No garage shall face a street at a ninety degree angle.

(iii) Dwellings constructed on the lots of said Subdivision which are one story dwellings only shall have at least 2500 square feet of heated area. Dwellings constructed on the lots of said Subdivision which are two story dwellings shall have at least 2500 square feet of heated area.

(iv) The main body of all dwellings shall have a roof pitch of 6/12 or greater.

38. Right of Board to Waive Use Restrictions and Rules. It is expressly provided that the Architectural Control Committee and/or the Board have the power and authority to waive the requirement or enforcement of any of the use or restrictive covenants as set forth herein. The Declarant recognizes that, from time to time, because of unforeseen circumstances, an Owner or Residence may not be capable of strictly complying with the covenants and restrictions contained herein, and, therefore, due consideration must be given because of such unforeseen circumstance. The Architectural Control Committee and Board may consider such waive on a case by case basis but any decisions to waive or enforce any of these restrictions and covenants must be done so only when all other restrictions and covenants not otherwise waived or enforced are met by the Owner or Residence. The Architectural Control Committee or Board must first endeavor to see that such covenant or restriction as waived or not enforced can be met or carried out by an alternative means by otherwise complying with the spirit of these covenants and restrictions.

ARTICLE VII

Prohibition of Timesharing

Timesharing shall be prohibited in the Community. The term "timesharing" shall include, without limitation, timeshare estate, timeshare use, and timeshare interval programs.

ARTICLE VIII

Insurance and Casualty Losses

Section 1. Insurance. The Association's Board of Directors or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements on the Common Property.

The Board shall obtain a public liability policy applicable to the Common Property insuring the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents. The public liability policy shall have a combined single limit of at least One Million (\$1,000,000.00) Dollars or a greater amount if directed by Declarant during time specified in Article X. If available at reasonable cost, as determined in the sole discretion of the Board, the Board shall also obtain directors' and officers' liability insurance.

All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association, as trustee, for the respective benefited parties, as further identified in subparagraph (b), below. Such insurance shall be governed by the provisions hereinafter set forth:

- (a) All policies shall be written with a company licensed to do business in Alabama and holding a rating of B or better as established by A. M. Best Company, Inc., if available, or, if not available, the most nearly equivalent rating.
- (b) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.
- (c) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, Occupants, or their Mortgagees, and the insurance carried by the Association shall be primary.
- (d) All insurance policies shall be reviewed annually by one or more qualified persons.
- (e) The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

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(i) a waiver of subrogation by the insured against any claims against the Association's Board of Directors, its manager, the Owners, the Declarant, and their respective tenants, servants, agents, and guests;

(ii) a waiver by the insurer of its rights to repair and reconstruct instead of paying cash;

(iii) that no policy may be canceled, invalidated, or suspended on account of anyone or more individual Owners;

(iv) that no policy may be canceled, invalidated, or suspended on account of any defect or the conduct of any director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect or to cease the conduct and the allowance of a reasonable time thereafter within which a cure may be effected by the Association, its manager, any Owner or Mortgagee;

(v) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

(vi) that no policy may be canceled or substantially modified without at least thirty (30) days' prior written notice to the Association.

Section 2. Property Insured By Association: Damage and Destruction.

Immediately after the damage or destruction by fire or other casualty to all or any portion of any improvement covered by insurance written in the name of the Association, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty.

Any damage or destruction shall be repaired or reconstructed unless, within sixty (60) days after the casualty, at least sixty-six (66%) percent of the total Association vote entitled to vote thereon, the Owner(s) of the damaged property, if any, and, so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article X hereof, the Declarant, otherwise agree. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates

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of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however such extension shall not exceed one hundred and twenty (120) days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed.

If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the Association's Members, levy a special assessment against all Owners. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds are available from insurance exceed the costs or repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited to the benefit of the Association.

In the event that it should be determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the property shall be restored to its natural state and maintained as an undeveloped portion of the Community in a neat and attractive condition.

Section 3. Property Insured by Owners: Damage and Destruction. By virtue of taking title to property within the Community, each Owner covenants and agrees with all other Owners and with the Association that each individual Owner shall carry casualty insurance insuring their residence for its full appraised value and for casualty loss as may be defined by the insurance company as the Owner may choose. Each individual Owner further covenants and agrees that in the event of a partial loss of damage and destruction resulting in less than total destruction, the individual Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction. In the event that the structure is totally destroyed and the individual Owner determines not to rebuild or to reconstruct, the individual Owner shall clear the Residence of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction.

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Section 4. Insurance Deductible. The deductible for any casualty insurance policy carried by the Association shall, in the event of damage or destruction, be allocated among the Persons who are responsible hereunder, or under any declaration or contract requiring the Association to obtain such insurance, for maintenance of the damaged or destroyed property.

ARTICLE IX Condemnation

Whenever all or any part of the Common Property shall be taken (or conveyed in lieu of and under threat of condemnation by the Board, acting on its behalf or on the written direction of all Owners subject to the taking, if any) by any authority having the power of condemnation or eminent domain, the Association shall represent the Owners. The award made for such taking shall be payable to the Association as trustee for all Owners. The provisions of Article VIII, Section 2, above, applicable to Common Property improvements damage or destruction, shall govern replacement or restoration and the actions to be taken in the event that the improvements are not restored or replaced.

ARTICLE X Annexation of Additional Property

Section 1. Unilateral Annexation by Declarant. As the owner thereof or, if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege, and option from time to time at any time until ten (10) years after the recording of this Declaration to subject all or any portion of the real property adjacent and/or contiguous to the Platted Subdivision of Magnolia Springs Subdivision to the provisions of this Declaration and the jurisdiction of the Association by filing for record a Supplementary Declaration in respect to the property being annexed. Any such annexation shall be effective upon the filing for record of such Supplementary Declaration unless otherwise provided therein.

The rights reserved unto Declarant to subject additional land to the Declaration shall not and shall not be implied or construed so as to impose any obligation upon Declarant to subject any of such additional land to this Declaration or to the jurisdiction of the Association. If such additional land is not subject to this Declaration, Declarant's reserved rights shall not impose any obligation on Declarant to impose any covenants and restrictions similar to those contained herein upon such additional land or nor shall such rights in any

manner limit or restrict the use to which such additional land may be put by the grantor or any subsequent owner thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not.

ARTICLE XI

Mortgagee Provisions

The following provisions are for the benefit of holders of first Mortgages on Residences in the Community. The provisions of this Article apply to both this Declaration and the By-Laws notwithstanding any other provisions contained therein.

Section 1. Notices of Action. An institution holder, insurer, or guarantor of a first Mortgage, who provides written request to the Association (such request to state the name and address of such holder, insurer, guarantor and the Residence number, therefore becoming an "eligible holder"), will be entitled to timely written notice of:

(a) any condemnation loss or any casualty loss which affects a material portion of the Community or which affects any Residence on which there is a first Mortgage held, insured, or guaranteed by such eligible holder;

(b) any delinquency in the payment of assessments or charges owed by an Owner of a Residence subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by an Owner of a Residence of any obligation under the Declaration or By-Laws of the Association which is not cured within sixty (60) days;

(c) any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

(d) any proposed action which would require the consent of a specified percentage of eligible holders.

Section 2. Special FHLMC Provision. So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least two-third (2/3) of the first Mortgagees or at least two-thirds (2/3) of the total Association vote entitled to vote thereon consent, the Association shall not:

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(a) by act or omission seek to abandon, partition, divide, encumber, sell, or transfer the Common Property which the Association owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Property shall not be deemed a transfer within the meaning of this subsection);

(b) change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner of a Residence (A decision, including contracts, by the Board or provisions of any Supplementary Declaration regarding assessments for Parcels or other similar areas shall not be subject to this provision where such decision or Supplementary Declaration is otherwise authorized by this Declaration.);

(c) by act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Residences and of the Common Property (The issuance and amendment of architectural standards, procedures, rules and regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision.);

(d) fail to maintain insurance, as required by this Declaration; or

(e) use hazard insurance proceeds for any Common Property losses for other than the repair, replacement, or reconstruction of such property.

First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Property and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

Section 3. No Priority. No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Residence in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

Section 4. Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Residence.

Section 5. Amendment by Board. Should the Veterans Administration, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate the provisions of

this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

Section 6. Veterans Administration Approval. As long as the Declarant has an option unilaterally to subject property to his Declaration as provided in Article X, the following actions shall require the prior approval of the Veterans Administration so long as the Veterans Administration is guaranteeing any Mortgage in the Community: annexation of additional property to the Community, except for annexation by Declarant in accordance with Article X, Section 1 hereof pursuant to a plan of annexation previously approved by the Veterans Administration; dedication of Common Property to any public entity; and material amendment of the Declaration, By-Laws or Articles of Incorporation.

Section 7. Applicability of Article XI. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws, or Alabama law for any of the acts set out in this Article.

Section 8. Failure of Mortgagee to Respond. Any Mortgagee (or insurer or guarantor of a Mortgage) who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request.

ARTICLE XII Easements

Section 1. Easements for Encroachment and Overhang. There shall be reciprocal appurtenant easements for encroachment and overhang as between each Residence and such portion or portions of the Common Property adjacent thereto or as between adjacent Residences due to the placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration) to a distance of not more than five (5) feet, as measured from any point on the common boundary between each Residence and the adjacent portion of the Common Property or as between adjacent Residences, as the case may be, along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner, Occupant, or the Association.

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Section 2. Easements for Use and Enjoyment of Common Property. Every Member shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Property which shall be appurtenant to and shall pass with the title to his property, subject to the following provisions:

(a) the right of the Board to charge reasonable admission and other fees for the use of any portion of the Common Property, including, without limitation, swimming pools, to limit the number of guests who may use the Common Property, to allow Persons who are not Members of the Association, such as Persons living or working in the vicinity of the Community, to use the Common Property on a regular or temporary basis and to charge or not charge a user fee therefor, and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by an Owner, his family, tenants, guests, Occupants, and invitees;

(b) the right of the Board to suspend the voting rights of an Owner and Occupant and the right of an Owner and Occupant to use the Common Property recreational facilities in the Community, if any, for any period during which any assessment which is hereby provided for remains unpaid; and, for a reasonable period of time for an infraction of the Declaration, By-Laws, use restrictions, rules and regulations or design guidelines;

(c) the right of the Board to borrow money for the purpose of improving the Common Property, or any portion thereof, or for construction, repairing or improving any facilities located or to be located thereon, and give as security for the payment of any such loan a Mortgage conveying all or any portion of the Common Property; provided, however, the lien and encumbrance of any such Mortgage given shall be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for the benefit of Declarant, or any Residence or Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Owner encumbering any Residence or other property located within the Community (Any provision in this Declaration or in any such Mortgage given by the Board to the contrary notwithstanding, the exercise of any rights therein by the holder thereof in the event of a default thereunder shall not cancel or terminate any rights, easements or privileges herein reserved or established for the benefit of Declarant, or any Residence or Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Owner encumbering any Residence or other property located within the Community.); and

(d) the right of the Board to dedicate or transfer all or any portion of the Common Property subject to such conditions as may be agreed to by the Owners. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved by at least a Majority of the Association, in person or by proxy, at a meeting duly called for such purpose (or, if a meeting is not called, upon the affirmative vote of at least a

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Majority of the votes cast in a referendum on the issue) and, so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article X hereof, by the Declarant.

An Owner's right of use and enjoyment in and to the Common Property and facilities located thereon shall extend to the members of his family and guests. Land Owner shall be deemed to have made a delegation of all such rights (except for the right of ingress and egress to the Owner's property) to the Occupants of any leased Residence.

Upon the affirmative vote of the Majority of the Association vote present, in person or by proxy, at a meeting duly called for such purpose (or, if a meeting is not called, upon the affirmative vote of at least a Majority of the votes cast in a referendum on the issue) and, so long as the Declarant has an option unilaterally to subject additional Property to this Declaration as provided in Article X hereof, the consent of Declarant, the Board may alter the use of any Common Property. For example, and by way of illustration and not limitation, the Board may convert tennis courts into a basketball court or vice versa.

An Owner's right of use and enjoyment in and to the Common Property and facilities located thereon shall not give any Owner the right of ingress or egress across any Residence to obtain access to such Common Property.

Section 3. Reserved Easement for the Provision of Services to the Community. There is hereby reserved to the Declarant, its successors and assigns blanket easements upon, across, above and under all property within the Community for access, ingress, egress, installation, repairing, replacing, maintaining, and removing rights-of-way, drainage facilities, floodway easements, and all utilities serving the Community or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone and electricity, and any other similar service such as, but not limited to, a mater television antenna system, cable television system, video system, or security system which the Declarant might decide to have installed to serve the Community or any portion thereof. It shall be expressly permissible for the Declarant and its successors and assigns to install, repair, replace, maintain, and remove or to authorize the installation, replacement, maintenance, or removal of such wires, conduits, cables and other equipment related to the providing of any such utility or service. Declarant and its successors and assigns shall have full rights of ingress and egress at all times over all portions of the Community for the installation, operation, maintenance, repair, or removal of any of the foregoing utilities or services and shall have the right to remove any unauthorized

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obstruction placed in or on any of the foregoing easements that would in the sole discretion of Declarant or its successors and assigns, interfere with the use of the above installation of the foregoing utilities or services. In no event shall the foregoing prohibit paving or landscaping within such easements. Declarant shall have the right to assign and convey, in whole or in part, the easements reserved by it hereunder to one or more public utility companies, quasi-public service companies, or relevant governmental authorities. All utilities except drainage installed within the above described easements shall be installed underground. This reserved easement may be assigned by Declarant by written instrument to the Association, and the Association shall accept such assignment upon such terms and conditions as are acceptable to Declarant. Rights exercised pursuant to such reserved easements shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

Section 4. Easement for Entry. In addition to the right of the Board to exercise self-help as provided in Article XIII, Section 2, hereof, the Board shall have the right, but shall not be obligated, to enter upon any property within the Community for emergency, security, and safety, which right may be exercised by the manager, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner, and the entering party shall be responsible for any damage caused. It is intended that this right of entry shall include the right of the Board to enter to cure any condition which may increase the possibility of a fire, slope erosion, or other hazard in the event an Owner or Occupant fails or refuses to cure the condition upon request by the Board.

Section 5. Easement for Lake Maintenance. Declarant hereby expressly reserves a perpetual easement for the benefit of Declarant and its successor and assigns, across such portions of the Community, determined in the sole discretion of Declarant (or its successors and assigns), as are necessary to allow for the maintenance of a lake(s), lakebed(s) and shoreline(s), if any, which are within the Community or which are made available for the use and enjoyment of Owners and Occupants within the Community. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment of property adjacent to the lake(s), reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense. In order to allow the exercise of the

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rights created pursuant to this easement, no tree or structure may be placed within fifteen (15) feet of the line formed by the highest normal pool elevation of any lake without the prior written approval of the Board or its designee.

Section 6. Easement for Property Maintenance Along Lake. Every Lake Lot Owner shall have a right and easement of access to that property located between a lake and the property line of such Lake Lot Owner as needed to perform the maintenance required under Article V.

ARTICLE XIII General Provisions

Section 1. Enforcement. Each Owner and every Occupant shall comply strictly with the By-Laws, the rules and regulations, the use restrictions and with the design guidelines, all as may be amended or modified from time to time, and with the covenants, conditions, and restrictions set forth in this Declaration, as may be amended from time to time, and in the deed to his or her property within the Community, if any. The Board may impose fines or other sanctions, which shall be collected as provided herein for the collection of assessments. Failure to comply with this Declaration, the By-Laws, the rules and regulations, use restrictions, or design guidelines shall be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the Board, on behalf of the Association, or, in a proper case, by an aggrieved Owner or Occupant. Failure by the Board or any Owner or Occupant to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter. The Board shall have the right to record in the appropriate land records a notice against the Owner who is responsible (or whose Occupants are responsible) for violating the foregoing.

Section 2. Self-Help. In addition to any other remedies provided for herein, the Board or its duly authorized agent shall have the power to enter upon a Residence or any portion of the Community to abate or remove, using such force as may be reasonably necessary, any erection, thing or condition which violates this Declaration, the By-Laws, the rules and regulations, the use restrictions, or the design guidelines. Except in the case of emergency situations and towing, the Board shall give the violating Owner ten (10) days' written notice of its intent to exercise self-help. All costs incurred shall be assessed against the violating Owner and shall be collected as provided for herein for the collection of assessments.

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Section 3. Duration's. The provision of this Declaration shall run with and bind the land and shall be and remain in effect perpetually to the extent permitted by law; provided, however, should any provision of Alabama law now or hereafter in effect limit the period during which covenants restricting land to certain uses may run, any provisions of this Declaration affected thereby shall run with and bind the land so long as permitted by such law; and such provisions shall be automatically extended for successive periods of ten (10) years or such shorter period as may be allowed by law, unless such extension is disapproved at a meeting duly called for such purpose by at least a Majority of the Association vote (or, if a meeting is not called, upon the affirmative vote of at least a Majority of the Association votes as recorded by a referendum on the issue) and, so long as the Declarant has an option unilaterally to subject additional Property to this Declaration as provided in Article X hereof, the written consent of the Declarant. Such meeting or referendum must be held and a written instrument reflecting disapproval must be recorded within the year immediately preceding the beginning of a renewal period. Every purchaser or grantee of any interest in any real property agrees that such provisions of this Declaration may be extended and renewed as provided in this Section.

Section 4. Amendment. This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rules, or regulation or judicial determination which shall be in conflict therewith; (b) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Residences subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of Mortgage loans, including, for example, without limitation the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, or a State or National Bank, to enable such lender or purchaser to make or purchase Mortgage loans on the Residences subject to this Declaration; or (d) if such amendment is necessary to enable any governmental agency or reputable private insurance company to insure Mortgage loans on the Residences subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Owner's Property unless any such Owner shall consent thereto in writing. Further, so long as Declarant has the right unilaterally to subject additional property to this Declaration as provided in Article X hereof, Declarant may unilaterally amend this Declaration for any other purpose; provided,

however, any such amendment shall not adversely affect the property of any Owner without the consent of the affected Owner or Occupant.

In addition to the above, this Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of at least a two-thirds (2/3) vote of the total Association vote entitled to vote thereon or three-fourths (3/4) of the Board and, so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article X hereof. In the event of a conflict between the Board and the Association, the Board's decision controls. A meeting may be called (but shall not be required to be called) to consider and vote upon any amendment. Amendments to this Declaration shall become effective upon recordation, unless a later effective date is specified therein.

Any procedural challenge to an amendment must be made within six (6) months of its recordation. In no event shall a change of conditions or circumstances operate to amend any provisions of the Declaration or By-Laws.

Section 5. Partition. The Common Property shall remain undivided, and no Owner nor any other Person shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners of all portions of the property located within the Community, the written consent of all holders of all Mortgages encumbering any portion of the property located within the Community, and, so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article X hereof, the consent of the Declarant.

Section 6. Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

Section 7. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any Person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provisions or the application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of this Declaration are declared to be severable.

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Section 8. **Captions.** The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

Section 9. **Perpetuities.** If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

Section 10. **Indemnification.** The Association shall indemnify every officer and Director against any and all expenses, including attorney's fees, imposed upon or reasonably incurred by any officer or Director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the ten Board of Directors) to which he or she may be a party by reason of being or having been an officer or Director, the officers and Directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and Directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or Directors may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and Director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or Director, or former officer or Director, may be entitled. The Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such coverage is reasonably available.

Section 11. **Construction and Sale Period.** Notwithstanding any provisions contained in this Declaration, the By-Laws, Articles of Incorporation, use restrictions, rules and regulations, design guidelines, and any amendments thereto, until Declarant's right unilaterally to subject property to this Declaration as provided in Article X terminates, it shall be expressly permissible for Declarant and any builder or developer approved by Declarant to maintain and carry on, upon such portion of the Community as Declarant may deem necessary, such facilities and activities as in the sole opinion of Declarant may be required, convenient, or incidental to Declarant's and such builder's or developer's development,

construction, and sales activities related to property described on Exhibit "A" and Exhibit "C", as it may be amended from time to time, to this Declaration, including, but without limitation: the right of access, ingress and egress for vehicular and pedestrian traffic over, under, on or in the Community; the right to tie into any portion of the Community with driveways, parking areas and walkways; the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for doing so), replace, relocate, maintain and repair any device which provides utility or similar services including, without limitation, electrical, telephone, natural gas, water, sewer, and drainage lines and facilities constructed or installed in, on, under and/or over the Community; the right to carry on sales and promotional activities in the Community, including directional and sales signs in the common areas; and the right to construct and operate business offices, signs, banners, flags, construction trailers, sales offices, model residences with fences, gates and walkways, and hold open houses and Parade of Homes for the public. Declarant and any such builder or developer may use Residences or offices owned or leased by Declarant or such builder or developer as model Residences and sales offices. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

Section 12. Books and Records. This Declaration, the By-Laws, the Articles of Incorporation, copies of rules and regulations, use restrictions, design guidelines, membership register, books of account, and minutes of meetings of the Members, or the Board and of committees shall be made available for inspection and copying by any Member of the Association or by his duly appointed representative and by holders, insurers, or guarantors of any first Mortgage at any reasonable time and for a purpose reasonably related to his or her interest as a Member or holder, insurer, or guarantor of a first Mortgage at the office of the Association or at such other reasonable place as the Board shall prescribe.

The Board shall establish reasonable rules with respect to:

- (a) notice to be given to the custodian of records;
- (b) hours and days of the week when such an inspection may be made; and
- (c) payment of the cost of reproducing copies of documents.

Every Director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or

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controlled by the Association. The right of inspection by a Director includes the right to make extra copies of documents at the reasonable expense of the Association.

Section 13. Audit. An audit of the accounts of the Association shall be made annually in such manner as the Board may decide. Upon written request of any institutional holder of a first Mortgage, such holder, upon payment of the costs associated therewith, shall be entitled to receive a copy of a financial statement within ninety (90) days of the date of the request.

Section 14. Notice of Sale. If an Owner sells his or her Residence, the Owner shall give to the Board, in writing, the name of the purchase of the Residence and such other information as the Board may reasonably require.

Section 15. Estoppel Certificate. Upon the request of any Member, the Board or its designee shall furnish written certificate signed by an officer or agent of the Association regarding unpaid assessments levied against that Member's property and any violations of the Declaration, By-Laws, use restrictions, rules and regulations, or design guidelines by any Owner or Occupant of such property. Such certificate shall bind the Association with respect to the foregoing matters. The Association may require the advance payment of a processing fee not to exceed Twenty-five (\$25.00) Dollars for the issuance of each such certificate.

Section 16. Agreements. Subject to the prior approval of Declarant, so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article X above, all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board shall be binding upon all Owners, their heirs, legal representatives, successors, assigns, and others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community.

Section 17. Implied Rights. The Association may exercise any right or privilege given to it expressly by the Declaration, the By-Laws, the Articles of Incorporation, any use restriction or rule, the design guidelines and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it therein or reasonably necessary to effectuate any such right or privilege.

Section 18. Deviations. The Board or its designee or the Declarant so long as the Declarant has an option to subject additional property to the declaration as provided in Article X above, may, in the exercise of its discretion, permit deviations from the restrictions

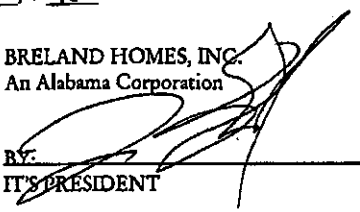
contained in this Declaration, the By-Laws, the rules and regulations, the use restrictions, and the design guidelines.

Section 19. Use of Word Magnolia Springs. No Person shall use the word Magnolia Springs in the name of any commercial or residential building or any commercial or residential business or enterprise or in any printed or promotional material without the prior written consent of the Declarant. However, Owners or Occupants may use the term Magnolia Springs in printed or promotional matter where such term is used solely to specify that particular property is located within Magnolia Springs Subdivision.

Section 20. Declarant's Reservation for Use of Property. The Declarant does hereby reserve for itself, its successors and assigns, and does grant to Louis Breland, his designees, successors and assigns, the right to use any lakes, ponds, recreational improvements, tennis courts, pools and/or all other Common Areas, provided that the use of such shall be subject to the same restrictions, covenants and limitations as herein set forth by these use Covenants.

IN WITNESS WHEREOF, the undersigned, have executed this instrument under seal this 19th day of November, 1998.

BRELAND HOMES, INC.
An Alabama Corporation

BY: 
IT'S PRESIDENT

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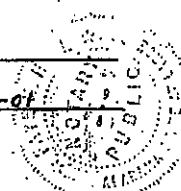
STATE OF ALABAMA
COUNTY OF MADISON

I, the undersigned Notary Public in and for said county and state, hereby certify that Louis W. Breland, President of Breland Homes, Inc., An Alabama Corporation, 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, as such president and with full authority, executed the same voluntarily for and as the act of said limited liability corporation.

Given under my hand and official seal this the 19th day of November, 1998.

Jaye M. Hall
Notary Public

My Commission Expires: 06-01-01



This instrument prepared by:
R. Wayne Wolfe, Esq.
WOLFE, JONES & BOSWELL
905 Bob Wallace Ave., STE 100
Huntsville, AL 35801
(256) 534-2205

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EXHIBIT "C"

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ALL LOTS AND BLOCKS IN WINDHILL SUBDIVISION, MAGNOLIA SPRINGS ADDITION, NOW KNOWN
AS MAGNOLIA SPRINGS PHASE ONE, AS RECORDED IN THE OFFICE OF THE JUDGE OF PROBATE
OF MADISON COUNTY, ALABAMA, IN PLAT BOOK 36, PAGE 79.

STATE OF ALA. KADISON CO.
98 DEC -8 PM 12:26
RECORDED
INDEXED
MAGNOLIA SPRINGS ADDITION
WINDHILL SUBDIVISION