

93034203

STATE OF ALABAMA)
COUNTY OF MOBILE)

DECLARATION
OF COVENANTS, CONDITIONS AND PROTECTIVE RESTRICTIONS
OF
BRECKENRIDGE, UNIT III

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

W I T N E S S E T H :

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

BRECKENRIDGE, UNIT III, as per plat thereof recorded in Map Book 58, Page, 53 of the records in the Office of the Judge of Probate Court of Mobile County, Alabama.

WHEREAS, Declarant is desirous of placing certain requirements, covenants, restrictions, conditions and reservations (collectively sometimes "Restrictions") upon the said Subdivision in accordance with a general scheme or plan in order (a) to protect the owners of each lot of the subdivision against improper use of surrounding lots as will depreciate the value of the property, (b) to preserve, as far as practicable, the natural beauty of each lot, (c) to ensure the creation of attractive, well designed, properly proportioned and appropriate homes of suitable materials with appropriate locations on said lot lines, (d) to ensure proper building setbacks from street and lot lines, (e) to provide adequate free space between structures, and (f) in general, to assure the best and most appropriate development and improvement of the Subdivision and each lot thereon;

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

ARTICLE I
DEFINITIONS

Section 1. "Association" shall mean and refer to Breckenridge Home Owners Association, Inc., its successors and assigns.

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

Section 3. "Subdivision" shall mean and refer to that certain real property hereinbefore described.

Section 4. "Common Area" shall mean any and all real property (including the improvements thereto) shown on the plat as Common Area or deeded by Declarant to the Association for the common use and enjoyment of the owners.

Section 5. "Lot" shall mean and refer to any plot of land shown upon the recorded plat of the Subdivision, with the exception of the Common Area.

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

ARTICLE II
LAND USE, ARCHITECTURAL CONTROL AND USE PROTECTIONS

Section 1. Residential Use Only. All Lots in the Subdivision shall be known and described as residential lots. No Lot may be improved, used or occupied for other than private residence purposes, and no flat, duplex, apartment house, group apartment, or condominium, though intended for residential purposes, may be erected thereon.

Section 2. Architectural Committee. No building shall be erected, placed or altered on any Lot in the Subdivision until each of the following shall be approved in writing by an Architectural Committee composed of W. Austin Mulherin and Ted Forwood, or by a representative of the members of said Committee: (a) building plans and specifications showing, among other things requested by the Committee or its representative, the habitable area square footage and the front elevations, and (b) a plot plan showing the location of such building. Any such written approval shall be by separate letter or by written notation on a set of said building plans and specifications and plot plan, which approved set shall be retained by the builder or homeowner. Approval shall be based on conformity and harmony of external

design with the existing structures in the subdivision, on the location of the building with respect to topography and finished ground elevation, and on compliance with all other requirements of these Restrictions.

In the event of death or resignation of either member of the Architectural Committee, the remaining member shall have full authority to appoint a successor member and to approve or disapprove such design and location, or to designate a representative with like authority. In the event said committee, or its designated representative, fails to give notice of approval or disapproval of such design and/or location within 30 days after said plans and specifications have been submitted to it, such approval will not be required and this covenant will be deemed to have been fully complied with. If such plans and specifications are disapproved, written notice of such disapproval shall be given to the submitting lot owner by hand delivery to such Owner or by depositing same in the U. S. mail, properly addressed and postage prepaid. Neither the members of such committee, nor its designated representative, shall be entitled to any compensation for services performed pursuant to this covenant. The powers and duties of such committee, and its designated representative, shall cease on and after January 1, 2010. Thereafter, the approval described in this covenant shall not be required unless, prior to said date and effective thereon, a written instrument shall be executed by the then record owners of a majority of the lots in this subdivision and duly recorded appointing a representative, or representatives, who shall thereafter exercise the same powers previously exercised by said committee.

Section 3. Building Location: There shall be a minimum setback from all streets in accordance with recorded plat. No building on any lot shall be located nearer than 10 feet to the rear lot line. No building shall be located nearer than eight (8) feet to an interior lot line, and additionally, with reference to interior lot line, such building shall be located so that the sum of the distance from the building to the interior lot line on one side plus the distance from the building to the interior lot line on the other side shall be a minimum of twenty (20) feet. For the purpose of this covenant, eaves, steps and open porches shall not be considered as a part of the building, provided, however, that this shall not be construed to permit any portion of a building on a lot to encroach upon another lot. All building locations must also comply with any applicable building or zoning ordinances, unless a special exception is obtained from the appropriate governmental agency and approved by the Architectural Committee.

Section 4. Water Supply. No individual water supply system shall be permitted on any Lot unless such system is located, constructed, installed and approved in accordance with the requirements and regulations of all local and state public health

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authorities.

Section 5. Sewage Disposal. No cesspool or other individual sewage system shall be constructed or utilized on any Lot other than a septic tank with field lines approved by the local and state public health authorities or, if available, public sewage disposal system.

Section 6. Resubdivision. Except as hereinafter provided, no building or any part thereof, or any character, may be erected or maintained on any part of a Lot that is subdivided subsequent to the date hereof. Where a Lot is subdivided and all of its parts are combined with adjacent entire Lots, a building may, with the approval of the Architectural Committee, be erected and maintained on each of the Lots as so combined even though a portion of such building may be located on a part of such subdivided Lot, but each resulting combined Lot shall be subject to these Restriction as fully and completely as if shown on the Subdivision plat as a single Lot. Where a portion of a Lot, which portion is less than ten percent (10%) of the total area of the Lot, is conveyed to the Owner of the Lot adjacent to such portion, a building may, with the written approval of the Architectural Committee, be erected and maintained on the remaining portion of such Lot, which remaining portion of the Lot shall be subject to these Restrictions as fully and completely as if shown on the Subdivision plat as a separate lot. The above and foregoing shall not be applicable to Lots 10 and 11, which are in the process of being subdivided into Lots 10-A, 10-B, and 11, which shall be permissible.

Section 7. Offensive Activities, Etc. No trade or business activity of any kind shall be carried on upon any Lot, nor shall any noxious or offensive activity be done thereon which shall be or become an annoyance or nuisance to the neighborhood. No structure, including fences, shall be erected so as to channel water on an adjacent Lot. No outside clothes lines shall be permitted in the Subdivision unless screened in such a manner as not to be visible from adjacent Lots or streets. No overnight street parking shall be permitted in the Subdivision.

No Satellite Discs, nor any other type of television or electronic device, shall be constructed or installed on any Lot without the prior explicit, written approval of the Architectural Committee. If the Committee approves the construction or installation of any such device, such approval may be conditioned as to its appearance, size and location. Under no condition shall such a device be permitted to be placed in the front yard area of any Lot.

Section 8. Trailers. No trailers, mobile home, basement, tent, shack, garage, barn, or other outbuilding erected on any Lot shall at any time be used as a residence, temporarily or permanently, nor shall any structures of a temporary character be

used as a residence. House trailers, mobile homes, motor homes, campers, and/or trailers must be kept in the rear yard, not visible from any street, or with a fully enclosed garage or under a carport not visible from any street. No boat twenty five feet (25') in length or larger may be kept on a Lot and all smaller boats must be kept on trailers in the rear yard not visible from any street, or within a garage or carport not visible from any street.

Section 9. Type and Size of Building. Except as otherwise provided herein, no building shall be erected, altered, placed or permitted to remain on any Lot in the Subdivision other than one single-family dwelling; no building shall be more than two and one-half (2-1/2) stories in height or shall have habitable area of less than 1,700 square feet, exclusive of basements, open porches, garages and the like, and any building that is more than one (1) story in height shall have at least 1,000 square feet of habitable area on the ground floor, exclusive of basements, open porches, garages and the like. A detached garage, however, servants' quarters or other outbuilding may be erected or permitted to remain upon any Lot upon prior written approval of the Architectural Committee.

The Architectural Committee shall give approval to one reasonably sized storage outbuilding to be located near the rear Lot line, unless the circumstances indicate otherwise for the benefit of the entire Subdivision.

Section 10. Animals. Dogs, cats and other domesticated animals, not exceeding four, may be kept by each Lot Owner, provided they are not kept, bred or maintained for any commercial purpose or use and are not a nuisance, annoyance or danger to the neighborhood. No other animal or fowl shall be kept or maintained on any part of said property.

Section 11. Garbage Disposal Containers and Equipment. No Lot shall be used as a dumping ground for rubbish, and all debris and trash from clearing or construction must be immediately removed, trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in clean, sanitary condition.

Section 12. Mining Operations. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon the surface of any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon, or within 500 feet beneath, the surface of 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.

Section 13. Fences, Walls, Hedges and Ornamental

Structures. No hedge shall be located nearer the front property line of any Lot than ten feet (10') to the rear of the front of the dwelling on such Lot without the written approval of the Architectural Committee; and no fence, wall or ornamental structure, other than which is an integral part of the dwelling itself, shall be constructed upon any portion of any Lot without prior written approval of the Architectural Committee.

Section 14. Signs. No sign of any kind shall be displayed to public view on any Lot except one professionally lettered sign not more than four square feet in size, which may advertise the property for sale or rent; except that during the construction period, an additional sign may be erected by the builder and except that a security service sign shall be allowed when applicable.

Section 15. Electric Power. Each Lot Owner shall provide underground electric service to service the improvements to such Lot and the installation of the individual underground electric service shall be under the Alabama Power Company's rules and regulations on file with the Alabama Public Service Commission relating to the underground electric service in Subdivision. Nothing herein shall be construed to prohibit overhead street lighting or ornamental yard lighting, where serviced by underground wires and cables.

Section 16. Easements. All easements shown on the recorded plat of the Subdivision are hereby adopted as a part of these Restrictions and all lots in the Subdivision shall be subject to such easements. The undersigned Owner reserves unto itself and its successors and assigns the right and easement, but not the obligation, to construct, install, maintain, repair and replace power, gas, sewer, telephone, and other utility lines, equipment and facilities and drainage ditches, in, on, over and under the streets and roads and easements shown on the recorded plat of the Subdivision, and to construct, install, operate, maintain, repair and replace lights, walls, fences, shrubbery, bushes and streets and other decorative or screening improvements in, on, over and under the property included within the areas designated as fences, drainage and/or utility easements, if any, with all right of ingress and egress to and from said streets and roads and easements across adjoining property; and the undersigned reserves unto itself and its successors and assigns the right to contract generally with others for the doing of any and all such things and the right to grant unto others such easements, rights, and privileges as the undersigned may deem appropriate or convenient in connection therewith.

Section 17. No garage or carport may open facing a street, with the exception of corner lots. All fireplace exterior pipe shall be surrounded with suitable chase, to be approved by the Architectural Committee. No roof pitch shall be of any less slant than 6/12 roof pitch. All front yards are to be completely

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sodded.

Section 18. Mailboxes. The location of all mailboxes must be submitted to the Committee for approval concurrently with the house plans.

ARTICLE III
PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of each class of members has been recorded.

ARTICLE IV
MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. It shall be the responsibility of the Declarant to maintain the Common Areas for a period of one (1) year next succeeding the execution of these covenants. The Declarant shall have the authority to add additional lots to the Association by making them subject to Restrictive Covenants equivalent to those herein contained, within five (5) years from the date hereof, if said lots are in a subdivision contiguous to Breckenridge.

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

Class A. Class A members shall be Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to twenty one (21) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs earliest:

(a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B

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membership,

(b) on January 1, 1994.

(c) when the Declarant records an instrument in the records of the Office of the Judge of Probate of Mobile County, Alabama, terminating the Class B stock.

ARTICLE V
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Lots owned by builders, purchased directly from the Declarant, shall not be subject to assessment unless and until a residence is placed thereon. The Declarant, for all other lots owned within the Subdivision, hereby covenants and each owner of any lot by acceptance of the deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

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

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first lot to an Owner, the maximum annual assessment shall be One Hundred and No/100 (\$100.00) Dollars per Lot. The maximum annual assessment may be increased each year not more than five (5%) percent above the maximum assessment for the previous year without a vote of the membership, and may be increased more than five (5%) percent of a maximum assessment for the previous year by a vote of two-thirds (2/3) or more of the membership at a meeting duly called for this purpose. The Board of Directors shall fix the annual assessment in an amount not in excess of maximums herein set forth.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the

Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assessment of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots, subject to assessment, and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to each Lot on the first day of the month following the conveyance of each Lot by the Declarant to the first Owner of each Lot who is not the Declarant. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance. No Lot owned by Declarant shall be assessed until the earlier of January 1, 1989, and the termination of Class B stock, but during such period that Declarant owes no assessments, Declarant shall cover any operating deficit of the Association.

Section 8. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within fifteen (15) days after the due date shall be deemed delinquent and shall bear interest from the due date at the rate of twelve (12%) percent per annum. The Association may bring an action at law against

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the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The liens of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE VI
AMENDMENT TO PLAT

For so long as Declarant owns one or more Lots in the Subdivision, Declarant shall have the right to cause changes, from time to time, to the plat of the Subdivision, provided, however, that Declarant shall not have the right to make any change that would change the boundary of or delete from the plat, any Lot not owned by Declarant.

ARTICLE VII
GENERAL PROVISIONS

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

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

Section 3. Violations. No violation of these Restrictions shall act as a cloud upon the title of the property concerned and title shall not be forfeited as a result of such violation.

Section 4. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by an instrument signed by not less than seventy five percent (75%) of the votes in the Association. Any amendment

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must be recorded.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this the 11th day of May, 1993.

DECLARANT:
BRECKENRIDGE, INC.

By: W. Austin Mulherin
W. AUSTIN MULHERIN, President

STATE OF ALABAMA)
COUNTY OF MOBILE)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that W. AUSTIN MULHERIN, whose name as President of BRECKENRIDGE, INC., a corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the 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 this the 11th day of May, 1993.

Ruth A. Ratliff
Notary Public

This Instrument Prepared By:

MAURY FRIEDLANDER
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STATE OF ALABAMA
FOR PUBLIC RECORDS
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NOTARY PUBLIC
FEDERAL TAX
STATE TAX
PROPERTY TAX
INSTRUMENT
RECORDED