

This instrument prepared by:

T. Eugene Burts

Attorney At Law

P.O. Box 456

Florence, AL 35631

STATE OF ALABAMA *

*

LAUDERDALE COUNTY *

3851

DECLARATION OF RESTRICTIONS AND COVENANTS

THIS DECLARATION, made this 4th day of March, 1981, by JACK B. REID, an unmarried individual, hereinafter referred to as "DEVELOPER", The First National Bank of Florence, Alabama, and Bank of Florence, Florence, Alabama, banking corporations under the laws of the State of Alabama who are the owner and mortgagees, respectively, of all of the following described real property situated in the City of Florence, Lauderdale County, Alabama, to-wit:

Lots 15 through 26, inclusive, in Block 25; Lots 1 through 7, inclusive, and the South 10 feet of Lot 8, all in Block 26; also all of Aspen Avenue included in the vacation, as vacated by instrument recorded in Volume 1120, Page 496, in the Office of the Judge of Probate of Lauderdale County, Alabama, said vacated portion lying North of said Block 25, South of said Block 26 and West of the alley extending North and South through said Blocks 25 and 26; all of the foregoing property being in BILTMORE SECTION WEEDEN HEIGHTS, PART THREE, according to the plat thereof recorded in the Office of the Judge of Probate of Lauderdale County, Alabama, in Plat Book 1, at Pages 252-253; together with the appurtenances thereunto belonging.

WHEREAS, Developer is currently erecting, developing and selling townhouses on certain lots and parts of lots included in the hereinabove described real property, all of which development is hereinafter referred to as "Aspen Place", A Resurvey of a Portion of Blocks 25, 26 and 28 and Aspen Avenue (vacated), Biltmore Section Weeden Heights, Part Three;

AND WHEREAS, Developer is desirous of establishing certain covenants and restrictions applicable to all of the above described lots, the entire property and the development made thereon;

NOW, THEREFORE, the undersigned Developer, in the interest of protecting the value and desirability of all the above described lots, and development now made or in the future to be made thereon, hereby declares that all of said Lots, hereinabove described, shall be held, sold and

conveyed subject thereto, and there is hereby imposed upon each of said Lots and Townhouse Sites 1 through 12, inclusive, and Lot 13, as "Common Land", as applicable, all in "ASPEN PLACE", according to the plat of said "ASPEN PLACE" recorded in the Office of the Judge of Probate of Lauderdale County, Alabama, in Plat Book 5, at Page 90, the following covenants and restrictions:

ARTICLE I

GENERAL RESTRICTIONS AND CONDITIONS

1-Each Townhouse Site and the structure included thereon, as indicated on said Plat, shall be used only for a single family dwelling. No Site or structure shall be used for the purpose of business, trade, any profession, home industry or other than for residential purposes.

2-No accessory structure shall be placed or remain on a Townhouse Site except a utility room, carport or garage, deck or patio, or small shelter for household pets as enumerated herein, all of which shall be of structural material and design similar to the main structure on each site.

3-Fences: No fences or walls shall be erected nor growing hedgerows planted and maintained forward of the front setback line of the Site as defined by the Zoning Ordinances of the City of Florence, Alabama, or by legal amendment to these Covenants. No fences or walls shall be constructed on the side or the rear of any Site that exceed five (5) feet in height from the improved grade of the Site. No chain link fences or fences made of metal or wire shall be permitted. Wooden fences and brick walls compatible with the design of the main structure are acceptable.

4-No animals, livestock or poultry of any kind shall be raised bred or kept on any Site, except for dogs, cats and other usual household pets which may be kept, provided that they are not maintained for any commercial purpose.

5-Garbage and refuse: No open or visible garbage or refuse containers shall be kept or placed on any Site.

ARTICLE II

SPECIAL RESTRICTIONS

1-Parking and Storage: Each owner shall restrict vehicular parking for himself and his family to those parking spaces situated on his respective Site or provided for use therewith, and shall not interfere with or allow his guests or invitees to interfere with or obstruct any parking spaces on other Sites. No boat, trailer, caravan, bus or commercial vehicle shall be parked or maintained in the front of any Site. No boat in excess of twenty (20) feet, housetrailer, trailer, motor home, bus or similar vehicle shall be parked, maintained or stored on any Site, nor shall any owner or guest of any owner maintain or store any such vehicle along a street within the development designated herein.

2-Nuisances: No obnoxious, offensive or illegal activity shall be carried on upon any Site nor shall anything be done on any Site which may be or become an annoyance or nuisance to the neighborhood. Noise shall be restricted to an acceptable minimum. No weeds, tall grass, underbrush or unsightly growth shall be permitted to grow or remain upon any Site, and no unsightly objects (including inoperative or junk vehicles) shall be allowed to be placed or to remain on any Site, except for building materials stored and used during the course of construction of any structure on any Site for a reasonable time. No automotive repairs shall be conducted on any Site except for temporary repairs effected by authorized outside mechanics on an emergency basis. No visible outside clothes lines shall be permitted. Trash and refuse pick-up shall be serviced from the rear of the Site if such service is available, and if not available, trash containers may be placed or refuse piles maintained in the open on any day that a pick-up is to be made, but at all other times such objects shall be stored so that they shall not be visible from adjacent and surrounding Sites.

3-Signs: No sign of any kind shall be displayed to the public view on any Site except: (a) a single name and address sign of not more than one (1) square foot; (b) one sign of not more than two (2) square feet advertising the Site and structure for sale; and (c) signs used by the Developer to advertise various Sites for sale during the construction and initial sales period.

4-Mail receptacles: In the interest of harmonizing the appearance of all mailboxes within the development, the Developer shall initially designate the type of mailbox and the Owner shall install and utilize identical mailbox posts. Each Owner shall furnish a U.S. Postmaster approved mail receptacle, and shall maintain and replace as needed such mail receptacles and posts as nearly identical as possible.

5-Subdivision: No Site or structure, shall be split, divided or subdivided for sale, resale, gift, transfer or otherwise.

ARTICLE III

COVENANTS AND CONDITIONS WITH RESPECT TO STRUCTURE AND IMPROVEMENT

1-General maintenance: Each Owner shall keep his Site and the structure thereon in good order and repair on the exterior thereof, including but not limited to the seeding, watering and mowing of all lawns, the pruning and cutting of all trees and shrubbery and the painting and other appropriate external care of the structure and Site, all in a manner and with such frequency as is consistent with good property management.

2-Exterior modification of structure: No Owner of any Site shall modify the structure on his Site by adding a room or rooms, changing the roof lines, adding decks, or materially changing or altering the color as to the main structure, or making other alterations in the exterior appearance of the main structure inconsistent with the general decor of the development without the express written approval of the Owners of 10/12ths of the designated Townhouse Sites in this development. Each Owner, in acquiring title to his respective Townhouse Site, acknowledges that the

outside decor, color schemes and designs have been selected in such a manner as to be consistent and harmonious with other Townhouses within the Development, and agrees to maintain his respective Site and structure in such manner as to maintain and perpetuate the visual harmony within the Development.

3-Subjacent support, damage or destruction: Since the structures on each Townhouse Site will have party walls and such structures shall support the common roof for each unit of Townhouses, each Owner agrees that he shall not allow to exist within the areas defined by his respective walls, or above or below the same, any defect or hazard which could result in damage or loss of use and enjoyment of the adjacent Townhouse units. Each Townhouse Owner shall immediately repair and keep in good repair the foundation structure, as well as the wall and roof structure, in the future in order to provide at all times subjacent support for the adjacent Townhouses. To this end, any roof leakage or plumbing leakage shall be immediately repaired and each Owner shall cooperate with the adjacent Owners for this purpose.

In the event of damage or destruction to any Townhouse structure within the Development, the respective Owner thereof agrees as follows:

(a) In the event of total destruction of the Townhouse unit of an individual Owner, with the adjacent Townhouse units remaining intact or only partially destroyed, the Owner shall be obligated to reconstruct his structure as promptly as adjustment of a hazard insurance claim may be made, but in no event can delay in beginning of reconstruction extend beyond a term of ninety (90) days from the date of said destruction; and pending and during such reconstruction the Owner shall provide proper subjacent support and roof and party wall support for his adjacent neighbors.

(b) In the case of partial damage or destruction, the Owner shall, as promptly as an insurance adjustment may be made, cause the damage or destruction to be repaired and restored in a first class condition in accordance with the plans and specifications of the original structure and

in conformity with its original exterior painting and decor. In no event shall any damaged structure be left unrepaired and unrestored for in excess of sixty (60) days.

Any external changes or modifications in a rebuilt structure which may have been completely or partially destroyed must have the express written approval of the Owners of 10/12ths of the designated Townhouse Sites in this Development.

4-Special structural easements: Each townhouse site shall be subject to an easement for encroachments created by construction, settling and overhangs as designed or constructed by Developer. A valid easement for said encroachments and for maintenance of same, so long as it stands, shall and does exist. In the event of partial or total destruction of one or more townhouse units, the Owners of the Townhouse Sites so affected agree that minor encroachments of parts of adjacent townhouse units due to construction shall be permitted and that a valid easement for said encroachments and the maintenance thereof shall exist.

ARTICLE IV

ACQUISITION AND CONTROL OR DISPOSITION OF COMMONLY OWNED PROPERTY

1-Title: The Owners of each Townhouse Site in this Development shall initially acquire with the Owner's site, subject to the nuisance prohibitions aforesaid and conditions hereinafter stated, an undivided 1/12th interest in the real property, together with the appurtenances, designated as Lot 13, (known hereafter as the "Common Land") in "ASPEN PLACE" according to the Plat of said "ASPEN PLACE" recorded in the Office of the Judge of Probate of Lauderdale County, Alabama, in Plat Book 5, at Page 90; and the deed to each Townhouse Site shall expressly or by implication describe such title in the "Common Land" designated as Lot 13, aforesaid.

The rights of each owner being hereafter described with regard to said property as his rights in the "Common Land", each Owner shall take

such title to his Townhouse Site and the "Common Land" subject to the following terms, conditions and restrictions:

- (a) Each Owner agrees that the subsequent sale of his Townhouse Site shall include the conveyance of his interest in the Common Land in Lot 13, aforesaid, with the exception hereinafter designated. Should a deed of conveyance fail to include an express description of the rights of such Owner in the Common Land, such deed shall be construed for the purposes of title under the adoption of these Covenants as including the title of such Owner in the Common Land as he may have at the time of such conveyance, and this provision shall be binding upon the heirs, assigns, executors and administrators of such Owner.
- (b) The undivided interest of each Owner in said Common Land shall not be subject to the disposition thereof by any bill in court at law or in Equity for a sale for partition or distribution, since the interest in the Common Land shall not be deemed to be severable in title from the title to the Townhouse Site of such Owner except under the exception hereinafter stated.
- (c) Such permanent recreational structures as may be constructed on the Common Land shall be jointly owned and maintained by all of the Owners of the Common Land with equal responsibility therefor.
- (d) The Owners of the Common Land shall be jointly responsible for the upkeep and maintenance of said land, and any recreational structures thereon except those removable structures which may be owned by individuals (such as playground equipment), and such land shall be kept clear and free of weeds and maintained in a respectable manner as a recreational area in keeping with the requirements of the Zoning laws of the City of Florence, Alabama.
- (e) The exception to the subsequent vesting of title in the Common Land, or any interest therein, shall be that the Owner of any undivided interest in said Common Land may sell or convey his interest therein to any one or more of the then Owners of the other Townhouse Sites in said Development, and title as an undivided interest shall pass as a part thereof with the subsequent conveyance of any Townhouse Site in proportion to the amount of undivided interest vested in said Owner selling as he shall own in said Common Land.
- (f) In keeping with the possibility of any change in the future character of said neighborhood development, subject to the consent of the Planning Authority of the City of Florence, Alabama, obtained in writing and recorded in the public records, upon the consent of the Owners of 10/12ths of the designated Townhouse Sites in this Development in writing acknowledged and recorded in the public records for title purposes, the Owners of the Townhouse Sites in this Development agree to sell and convey the entire interest of all in such Common Land to any other party or legal entity for use or development

in keeping with the regulations then in force of such Planning Authority. If any Owner shall at such time refuse or be unable to join in such approved sale and conveyance such sale or conveyance may be enforced against the party refusing or under disability by decree of a court of law having the jurisdiction of the Circuit Court of Lauderdale County, Alabama; but such proceeding shall be without cost to said party and said party shall receive his pro-rata share of the sale price of said property in such sale as approved by and ordered by the Court.

2-Control and Use of Property: The control and use of the Common Land is anticipated to be solely for common recreation purposes; and the construction of any major structural improvements on said land which would call for any financial support by the owners of the Townhouse Sites in this Development shall be subject to the express written approval of the Owners of 10/12ths of the designated Townhouse Sites in this Development, whether or not all of such Owners are to be allowed the use of such structural facilities. Upon such express written approval of the Owners of 10/12ths of the designated Townhouse Sites in this Development certain owners who may desire to be excluded from financial contribution toward the construction or maintenance of any such structural facility may be excluded from the use of such facilities if the remaining Owners agree to support the same, and a statement to this effect referring to the legal description of the common property concerned must be filed in the Probate Office of Lauderdale County, Alabama, referring to the property in order that the same may be a legal notice of the loss of these rights for the benefit of innocent purchasers from any owners so affected, and these conditions shall be binding upon the heirs, and assigns of each property owner until an agreement changing such condition shall subsequently be also filed.

Upon the sale and conveyance of all of the Townhouse Sites in this Development, the Developer shall be excluded from all further participation in the control and use of the Common Land; and upon such event, the Developer shall further be absolved from liability for the maintenance, care, control, use, and enforcement of any Covenants and restrictions

concerning said Common Land and the use and development of such Common Land by those to whom he has made a conveyance of the same, their heirs, successors in use or assigns. Any further use and employment of the Common Land after such fact shall be the sole responsibility of the property owners.

ARTICLE V

ENFORCEMENT OF COVENANTS AND RESTRICTIONS

1-Developer: Upon the completion of the original sale of all of the Townhouse Sites in this Development, the Developer shall no longer have any right or obligation or responsibility for the enforcement of the provisions of these Covenants and all such rights and obligations shall pass to the then Owners of the Townhouse Sites in said Development.

2-Owners: These Covenants, restrictions and conditions may be enforced by any one or more Owners of property in said Development for the benefit of all parties in said Development by demand or by legal action in a Court of Law or in Equity. In connection therewith, any such Court may grant such relief as it may deem in Law or Equity to be proper in the circumstances.

ARTICLE VI

PROHIBITION AGAINST DIVISION OF PROPERTY RIGHTS

Regardless of any other provisions contained in these Covenants, restrictions and conditions, with the exception of the rights in the Common Land to be acquired by other Townhouse Site Owners, no Townhouse Site Owner may sell or grant any rights in said Common Land to any parties who are not also Owners of a Townhouse Site in this Development. It is the intention of this restriction to prevent title to Common Land from being sold to parties who are not Owners of the Townhouse Sites, except under the conditions of Article IV, 1(f), wherein all Owners may have parted with their title to the Common Land.

ARTICLE VIIMISCELLANEOUS PROVISIONS

1-Acceptance of Declaration: The grantee of any property within this Development as evidenced by said recorded plat of "ASPEN PLACE", and any interest in or title to the same, or the execution of a contract for the purchase thereof, whether from the Developer or a subsequent Owner of such property, shall accept such conveyance or other contract upon and subject to each and all of the Covenants, restrictions and conditions contained herein.

2-Term: This Declaration, and the Covenants, restrictions and conditions contained herein, shall attach to and run with the land for a period of twenty-five (25) years from the date that this Declaration is filed for record in the Office of the Judge of Probate of Lauderdale County, Alabama, after which time such Covenants, restrictions and conditions shall be automatically extended to successive periods of ten (10) years each, unless by vote in writing, the Owners of 10/12ths of the Townhouse Sites in this Development have agreed to revoke or to change said Covenants, restrictions and conditions in whole or in part.

3-Severability: The invalidation of any one or more of these Covenants, restrictions or conditions by judgment of any Court decree shall in no way affect any of the other provisions, which shall remain in full force and effect notwithstanding.

4-Amendment: Anything contained herein to the contrary notwithstanding, the Developer reserves the right to modify, release or amend all of the Covenants, restrictions and conditions contained herein until such time as the Developer has sold 10/12ths of the Townhouse Sites in this Development as shown by said recorded plat. In any event, such amendment by the Developer shall be subject to the approval of the Veterans Administration and the Department of Housing and Urban Development, or their successor agencies, by letter recorded attached to said amendment. After 10/12ths of the Townhouse Sites in this Development have been sold

by the Developer to Owners, these Covenants, restrictions and conditions may be modified and amended by the vote in writing of the Owners of 10/12ths of the Townhouse Sites (which may include the Developer), each such Site to carry one vote. Any such modification or amendment must be in writing and filed for record in the Office of the Judge of Probate of Lauderdale County, Alabama.

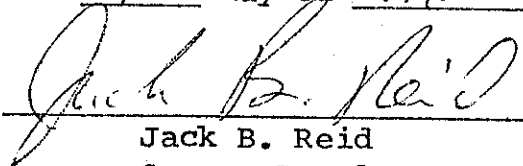
5-No Reverter: No restriction, Covenant, or condition herein is intended to be, nor shall the same be construed as, a condition subsequent or as creating any possibility of a reverter of title to any property.

CANCELLATION AND VOIDING OF PREVIOUS
COVENANTS

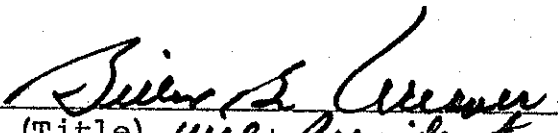
WHEREAS, these Covenants and restrictions are for the purpose of replacing and taking the place of that "Declaration of Restrictions and Covenants" recorded in the Office of the Judge of Probate of Lauderdale County, Alabama, in Volume 1177, Pages 142-157, including all of the Exhibits attached thereto; now therefore, the undersigned do hereby declare to be null and void and of no effect the aforesaid Declaration and Exhibits thereto filed in said Volume 1177, Pages 142-157, and do adopt, ratify and confirm this, the within DECLARATION OF RESTRICTIONS AND COVENANTS dated this date in place thereof.

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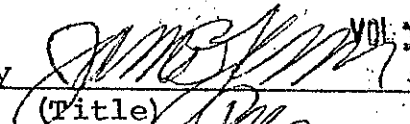
IN WITNESS WHEREOF, the undersigned, as Developer, as Owner, and as Mortgagees of all of the property described herein, have hereunto set their hands and affixed their seals this 4th day of March, 1981.


SEAL
Jack B. Reid
Owner, Developer

THE FIRST NATIONAL BANK OF FLORENCE,
a banking corporation,

By 
SEAL
(Title) vice President

BANK OF FLORENCE, FLORENCE, ALABAMA,
a banking corporation

By 
SEAL
(Title) Pres.

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STATE OF ALABAMA *

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LAUDERDALE COUNTY *

I, the undersigned authority, a Notary Public in and for said County and State, hereby certify that Jack B. Reid, a single man, 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 said instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 4th day of March, 1981.

Barbara S. Reed
Notary Public

STATE OF ALABAMA *

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LAUDERDALE COUNTY *

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Billy B. Weaver whose name as Vice President of The First National Bank of Florence, Alabama, 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 said 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 official seal, this 5th day of March, 1981.

J. Eugene Smith
Notary Public

STATE OF ALABAMA *

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LAUDERDALE COUNTY *

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that James B. Flemming whose name as President of the Bank of Florence, Florence, Alabama, 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 said 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 official seal, this 5th day of March, 1981.

J. Eugene Smith
Notary Public

STATE OF ALABAMA,
LAUDERDALE COUNTY, PROBATE COURT
I hereby certify that the foregoing instrument was
filed to record in this office on March 5, 1981
at 1:55 PM and duly recorded in Vol. 1185 Page 539. 48
Deed Tax \$ — Mig. Tax — Fee 18.00

William Blumstein
Judge of Probate