

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF COVE CREEK SUBDIVISION**

STATE OF ALABAMA
LEE COUNTY

1278 603
Recorded in the Above
MISC Book & Page
05-31-2006 10:10:39 AM
Bill English - Probate Judge
Lee County, AL

KNOW ALL MEN BY THESE PRESENTS, that:

WHEREAS, Cove Creek Development, L.L.C. (hereinafter referred to as "Developer") is the Owner of Cove Creek Subdivision (hereinafter referred to as "Subdivision"), located in Opelika, Lee County, Alabama, as shown by the plat of Cove Creek Subdivision recorded in Plat Book 28 at Page 6 in the Office of the Judge of Probate of Lee County, Alabama (the "Plat"); and

WHEREAS, it is the present intention of Developer for the Subdivision to include residential lots, townhomes or condominiums and at least one commercial lot, as shown on the Plat.

WHEREAS, the Developer desires to subject certain portions of the Subdivision, and impose thereon, mutual and beneficial restrictions, covenants, terms, conditions and limitations (herein for convenience sometimes referred to collectively as "Restrictions") for the benefit of all the lots in the Subdivision.

NOW, THEREFORE, Developer does hereby proclaim, publish and declare that Lots 1-54 shown on the Plat (the "Subject Property") are subject to, held and shall be held, conveyed, hypothecated or encumbered, rented, used, occupied, and improved subject to the following restrictions which shall run with the land and shall be binding upon Developer, and upon all parties having or acquiring any right, title or interest in and to each such Lot or any part or parts thereof subject to such restrictions. The restrictions contained herein shall apply to each Lot forming part of the Subject Property, as well as to any future phases which the Developer may submit to this Declaration as Additional Property.

1. **DEFINITIONS.** As used throughout this Declaration, the following terms shall have the meanings set forth below, which meanings shall be applicable to both the singular and plural forms and tenses of such terms:

1.1 **Additional Property.** The term "Additional Property" shall mean and refer to any real property and any Improvements situated thereon lying adjacent to or in close proximity with the Subject Property (but which does not presently comprise any part of the Development) which Developer may from time to time submit and add to the provisions of this Declaration.

1.2 **Dwelling.** The term "Dwelling" means the structure used as a residential living unit located upon a Homesite, including the garage and any appurtenances.

1.3 **Lot.** The term "Lot" shall mean and refer to any unimproved designated portion of the Property upon which it is intended that a Dwelling be constructed thereon. Upon the recordation of any subdivision plat for any portion of the Property, each lot indicated thereon shall be deemed a Lot for purposes of this Declaration. A parcel of land shall be deemed unimproved and thus

considered to be a Lot rather than a Dwelling, until the Improvements constructed thereon are sufficiently complete to reasonably permit habitation thereof. Upon such completion, such Lot and the Improvements thereon shall collectively be considered to be a Dwelling for purposes of this Declaration.

1.4 **Owner.** The term "Owner" means any person, firm, corporation, partnership, association, trust, Limited Liability Company or other legal entity or any combination thereof which owns the fee simple title to a Lot.

2. DECLARATION.

2.1 **General Declaration.** Developer hereby declares that the Subject Property is and shall be subject to the easements, covenants, conditions, restrictions, charges, liens, and regulations of this Declaration; and each Lot, Dwelling, and common area thereof shall be held, owned, sold, transferred, conveyed, hypothecated, encumbered, leased, occupied, built upon, and otherwise used, improved, and maintained subject to the terms of this Declaration, which easements, covenants, conditions, restrictions, charges, liens, and regulations shall run with the title to the property and shall be binding upon and inure to the benefit of Developer and upon the Owner and Occupants.

2.2 **Development of Property.** Developer shall have the right, but not the obligation, for so long as Developer owns any Lot or Dwelling in the Subdivision, to make improvements and changes to all common areas and to all lots or dwellings owned by Developer, including without limitation: (i) installation and maintenance of any improvements in or to the common areas; (ii) changes in the location of the boundaries of any lots or dwellings owned by Developer or of the common areas; and (iii) installation and maintenance of any water, sewer, and any other utility systems and facilities within the common areas.

2.3 **Additional Property.** Developer reserves the right, in its sole discretion, at any time and from time to time to add Additional Property to the provision of this Declaration. At the time any Additional Property is specifically submitted to the terms and provisions of this Declaration, then such Additional Property shall constitute part of the Subject Property. Submission of Additional Property need not be consented to or approved by any Owner, Occupant or Mortgagee of any Lot or Dwelling. An amendment to this Declaration shall refer to this Declaration stating the book and page number of recordation in the land records of Lee County, Alabama, where this Declaration is filed for record and contain a description of the Additional Property, and shall state that said Additional Property is conveyed subject to the terms and conditions in this Declaration. The number of votes in the Association shall be increased by the Number of Lots or Dwellings within the Additional Property which are added and submitted to the Declaration and there shall continue to be one vote in the Association per Lot or Dwelling within the Development.

In no event shall Developer be obligated to submit any Additional Property to the provisions of this Declaration situated adjacent to or in close proximity with the Development. Notwithstanding anything provided in this Declaration to the contrary, the provisions in this article may not be modified, rescinded, supplemented or amended, in whole or part, without prior written consent of Developer, its successors or assigns.

2.4 **Subdivision Plat.** Developer reserves the right to record, modify, amend, revise, and otherwise add to, at any time and from time to time, a subdivision plat setting forth such information as Developer may deem necessary with regard to the development, including, without limitation the locations and dimensions of all Lots, Dwellings, common areas, additional property, public or private roads, utility systems, drainage systems, utility easements, drainage easements, access easements, set-back line restrictions, retention ponds, and drainage basins. Any such subdivision plats or any amendments thereto shall be binding on the portions of the Subject Property indicated thereon as if such subdivision plat were specifically incorporated into this Declaration and no approval thereof shall be required by any Owner, Occupant or Mortgagee of any Lot or Dwelling. Notwithstanding anything provided to the contrary in this Declaration, Developer may at any time, or from time to time, divide and re-divide, combine and re-subdivide any Lot owned by Developer.

2.5 **Reservation of Maintenance Easement.** Developer does hereby establish and reserve for the Association, its agents, employees, heirs successors and assigns a permanent and perpetual right and easement to enter upon any Lot or Dwelling for the purpose of mowing, removing, clearing, cutting, pruning underbrush, weeds, stumps or other unsightly growth and removing trash so as to maintain reasonable standards of health, fire, safety and appearance within the Development. Said easement shall not impose any duty or obligation upon Developer or the Association to perform any of the foregoing actions.

3. LAND USE AND BUILDING TYPE.

3.1 **Private Residential Use.** All Lots are restricted to private residences and shall not be improved, used or occupied for other than single family residence purposes; provided however, that shall prohibit the Developer from using any Lot as an office or modeled for sales and promotion purposes. No Lot shall be subdivided without the consent of the Developer and/or the ACC.

3.2 **Building Location.** No building shall be erected nor located on any lot nearer to the right of way line than the minimum building setback lines as required by the City of Opelika. These minimum setback line restrictions shall also apply to the garage. If the Owner of one lot, however, shall purchase a second lot, and the second lot purchased adjoins the first, the setbacks for the side lot line may be waived by the Owner and said Owner may construct a dwelling house on both said lots, subject to the front lot line and rear lot line setback requirements, and these restrictive covenants herein set out shall govern both said lots as one unit, and the lot Owner may not thereafter sell either lot or any part thereof separately, but the lot Owner must sell the two (2) lots as one track or parcel of land. For purposes of this section, eaves, steps and open porches shall not be considered as a part of the structure; provided, however, that this shall not be construed so as to prevent any portion of a structure on a lot be located nearer than required side lot line or any structure on an adjacent lot, whichever is greater. Developer reserves the right to approve the site plan prior to the home staking.

3.3 **Completion Date.** Construction of a dwelling shall begin within a period of two (2) years from the date on which a Lot is conveyed by the Developer to the purchaser thereof, unless such two (2) year period is extended by a written instrument duly executed by the Developer. During the period before construction, following conveyance by Developer and during the period

