

STATE OF ALABAMA

SHELBY COUNTY

**SOMMERSBY TOWNHOMES SUBDIVISION
DECLARATION OF PROTECTIVE
COVENANTS, RESTRICTIONS, EASEMENTS,
RIGHTS AND LIENS**

This Declaration of Protective Covenants, Restrictions, Easements, Rights and Liens is made on this 5th date of January 1996, by Donald R. Murphy, the owner of the property described below (hereinafter referred to as the "Owner") which property is to be developed as a residential subdivision known as Sommersby Townhomes.

Inst # 1996-00484

WITNESSETH

WHEREAS, Donald R. Murphy is the fee simple owner of certain real property located in Shelby County, Alabama, which is more particularly described as follows (hereinafter referred to as the "Real Estate"):

Lots 1 through 68, Sommersby Townhomes as recorded in Map Book 20 page 112, in the Probate Office of Shelby County, Alabama.

WHEREAS, the Owner intends to develop the Real Estate and the Common Area (the Real Estate and Common Area being hereinafter sometimes collectively referred to as the "Property") pursuant to a general subdivision plan covering all of the property and subject to certain protective covenants, restrictions, easements, rights, equitable servitudes, liens and charges, all running with the land.

WHEREAS, the plan for the Property provides for the Real Estate to be subdivided into lots on which single-family townhouse units will be constructed (hereinafter such lots being referred to as "Lots").

NOW, THEREFORE, in order to enhance and protect the value, attractiveness and desirability of the Property, and in furtherance of a general plan for the development, protection, maintenance, improvement, and sale of the Property, the Owner hereby declares that all of the Property

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shall be subject to the following covenants, restrictions, easements, rights, equitable servitudes, liens and charges:

1. Land Use. The Real Estate shall be used exclusively for residential purposes. No building shall be constructed, placed or permitted to remain on any Lot other than one single-family dwelling not more than two and one-half stories in height (excluding any subterranean, basement). No part of the Property shall be used or caused to be used in any way, directly or indirectly, for any business, commercial, manufacturing, warehousing or other such nonresidential purpose, except, that the Owner may use the Property as a model home site, and may operate display and sales offices on the Property for the purpose of selling Lots for as long as the Owner continues to own any portion of the Property.

2. Parking. No automobile, truck, house trailer, camper, boat, dune buggy or any other type vehicle shall be parked or maintained on any permanent basis on the right-of-way or in front of any lot. Only vehicles used for day-to-day transportation of the property owners, their families or invitees may be kept or stored on the property. No house trailer, dune buggy's, or inoperable vehicles may be kept or stored on the premises. Campers and boats may be stored on the premises but must not be seen from the street. Nothing contained in this paragraph shall preclude guests or invitees of any lot owner from parking in the front of any lot so long as such guest or invitee parks in the designated parking area and parks only on a temporary basis. Ownership of each lot shall entitle the owner or owners thereof to the use of not more than two automobile parking spaces, which shall be as near and convenient to said lot as reasonably possible, together with the right of ingress and egress in and upon said parking area.

3. Dwelling Size. The first floor living area of any dwelling constructed on the real estate, exclusive of open porches shall be not less than 700 square feet.

4. Set-back Requirements. Dwelling shall be constructed and placed on a Lot in conformance with the minimum building set-back requirements set forth in applicable municipal or county ordinances from time to time in effect or as may be indicated on the recorded plat covering the Property. Owner reserves the right to grant waivers for setback violations on the recorded plat.

5. Nuisances. No noxious or offensive activity, or activity which is, or may become, an unreasonable nuisance or annoyance to any Lot owner, shall be conducted or permitted in or around any portion of the Property. No loud noises or noxious odors shall be emitted or permitted on the Property.

6. Temporary Structures. No out-building, tent, shack or shed of any kind shall be placed upon any portion of the Property, either temporarily or permanently, other than temporary structures of offices erected by the Owner in connection with the construction and sale of townhouse units on the Lots. No garage, trailer, camper, motor home or recreation vehicle shall be used as a residence on the Property, either temporarily or permanently. All fire wood storage must be behind residence.

7. Signs and Antennas. No sign, poster, display, billboard or other advertising device of any kind shall be erected or displayed to the public view on any portion of the Property, except one sign of not more than 6 square feet advertising a Lot for sale or rent may be placed on the lot, and signs, regardless of size, used by the Owner to advertise the Property during the period in which the Owner is constructing and/or selling townhouse units on the Property, may be placed on the Property. No television or other antenna shall be placed or erected on the exterior of any residence. There shall be no satellite dishes allowed larger than 24 inches in diameter, then only located on the rear of the Townhouse unit.

8. Oil and Mining Operations. No exploration, drilling, development or refining of or for hydrocarbons, or quarrying or mining operation of any kind, shall be conducted or permitted upon or under any portion of the Property, and no wells, tanks, tunnels, surface mines or underground mines shall be permitted thereon or therein. No derrick or other structure designed for use in boring or drilling for water, oil or natural gas shall be erected, maintained or permitted upon the Property.

9. Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept upon the Property, except the usual and ordinary household pets (e.g. dogs, cats, fish and birds) may be kept on the Property, provided that such animals are not kept, bred or maintained for commercial purposes or in unreasonable numbers.

10. Garbage and Refuse Disposal. No portion of the Property shall be used or maintained as a dumping ground for wastes, rubbish or garbage. All such refuse stored or kept on the Property must be placed in sanitary containers, and no noxious or foul odor shall be permitted to emanate therefrom.

11. Townhouse Easements. The Owner intends to construct a townhouse on each Lot, and the construction of such townhouses may require that certain eaves, roof overhangs, brick veneers, siding and other architectural features and building materials encroach upon or hang over contiguous Lots. Accordingly, there is hereby created, granted and reserved, as an appurtenance to each Lot, a perpetual easement over and across each Lot, contiguous thereto for encroachments and overhangs, as well as for all encroachments and overhangs resulting from any natural movement or settling of any such townhouse. In addition, there is hereby created, granted and reserved to the owner or owners of each Lot a license and right of entry across contiguous Lots as may be reasonably needed to maintain and repair such encroaching or overhanging structures. If any townhouse shall be damaged or destroyed, the owner or owners thereof shall be permitted to repair and reconstruct such townhouse with encroachments and overhangs not more intrusive than those existing at the time of such damage or destruction and thereafter said license and right of entry shall continue in effect. In addition, owner plans to develop additional residential subdivisions in the future on property adjacent to the property referred to herein and reserves for itself an easement for ingress and egress over and across subject property as may be necessary for the construction and development of additional residential subdivisions on adjoining property. There is also reserved an easement for drainage as may be required resulting from the topography or lay of the land. Easements for installation and maintenance of utilities and drainage facilities are reserved and created as shown on the recorded map.

12. Covenants to Run with the Land. The covenants, restrictions, easements, rights, equitable servitudes, liens and charges set forth herein shall (a) run with the land (the Property); (b) be binding upon any and every person or entity having any rights, title or interest in the Property, or any part thereof, and such person's or entity's heirs, executors, administrators, successors and assigns; (c) inure to the benefit of every portion of the Property and every interest therein; (d) inure to the benefit of , and be

binding upon, the Owner, its successors in interest, and each grantee from the owner of any interest in the Property and such grantee's successors in interest; and (e) be binding and in effect for a period of twenty-five years from the date this instrument is recorded in the Probate Office of Shelby County, Alabama after which period said covenants, restrictions, easements, rights, equitable servitudes, liens and charges shall be automatically extended for successive periods of ten years each unless an instrument amending or modifying this instrument, executed by a majority of the then owners of not less than three-fourths of the Lots, shall be recorded in the Probate Office of Shelby County, Alabama.

13. Application to Owner. Notwithstanding any provisions herein to the contrary, nothing contained in this instrument shall prevent, hinder or limit the Owner in any manner whatsoever in connection with the development of the Property and the construction and sale of townhouse units on the Property, and any provision have such effect shall be null, void and unenforceable against the Owner.

14. Consent of Lot Owners. Whenever the consent of the owners of the Lots is required with respect to any action described herein, the consent of the owner or owners of any Lot shall be deemed given if the record owner of such Lot (or a majority of such record owners, if more than one) shall evidence such consent in writing.

15. Prohibition Against Changing Exterior or Landscaping. Each lot owner shall, from time to time, paint (provided the same color is used) and otherwise maintain the exterior of his dwelling as needed. Such maintenance and painting shall be done in a manner harmonious with the remaining dwelling units and shall not be completed in such a manner, color, or design so as to disrupt the harmonious blending of the original architectural plans of the dwelling units. Each lot owner shall be prohibited from making any changes at all to the front exterior of their respective residence or making any changes at all in the landscaping, it being understood that all residences and landscaping are designed to blend harmoniously with each other.

16. The undersigned owner reserves the right to modify, release, amend, void, transfer or delegate all the right, reservations and restrictions herein set forth, or the right to modify, release, amend, void or transfer any

one, or more, of the said herein set forth restrictions on lots in the said subdivision.

17. Invalidation of any one of these provisions or covenants by judgments, or court order, shall in no way affect any of the other provisions which shall remain in full force and effect.

18. Enforcement. If any lot owner, or their heirs or assigns shall violate, or attempt to violate, any of the covenants herein, it shall be lawful for any other person, or persons, owning real property situated in said development, or subdivision to prosecute any proceedings at law in equity against the person, or persons, violating or attempting to violate any such covenant, and either to prevent him, or them, from so doing, or to recover damages or other dues from such violation.

IN WITNESS WHEREOF, the undersigned Donald R. Murphy has hereunto set his hand and seal on this 5th day of January, 1996.

ATTEST:

DONALD R. MURPHY

BY: Donald R. Murphy

STATE OF ALABAMA

COUNTY OF SHELBY

I, the undersigned a Notary Public in and for said County in said State, hereby certify Donald R. Murphy 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 conveyance, he, with full authority, executed the same voluntarily.

Given under my hand and official seal, this the 5th day of January, 1996.

Pearl Zarnie

Notary Public

My commission expires: 1-26-99

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