

THIS INSTRUMENT WAS PREPARED BY:

J. Fred Powell
3000 Southtrust Tower
Birmingham, Alabama 35203

DECLARATION OF PROTECTIVE COVENANTS

STATE OF ALABAMA)	FOR
)	Heather Point (The Second Addition
COUNTY OF SHELBY)	to Kerry Downs), A Subdivision of
	Inverness, Hereinafter Referred to
	as The Second Addition to Kerry Downs

KNOW ALL MEN BY THESE PRESENTS, that:

WHEREAS, 2154 TRADING CORPORATION, a corporation, doing business as INVERNESS (herein referred to as "Developer"), is the owner of certain lots and tracts of land known as the Second Addition to Kerry Downs, a subdivision of Inverness (herein referred to as "Subdivision"), located in Shelby County, Alabama; as shown by the Plat of the Second Addition to Kerry Downs, a subdivision of Inverness, as recorded in Map Book 191, page 39, in the office of the Judge of Probate of Shelby County, Alabama; and

WHEREAS, Developer desires to subject said property and each lot to be located in said Subdivision to and impose upon said lots 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 said Subdivision, the future owners of said lots, the Inverness Country Club, and any other party as may be specified herein.

NOW, THEREFORE, Developer does hereby proclaim, publish and declare that all of said lots in said Subdivision (herein "lot or lots") 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 the real property or any part or parts thereof subject to such restrictions. The restrictions contained herein shall apply only to lots in the Second Addition to Kerry Downs, a subdivision of Inverness, and shall not apply to any other land owned by Developer, even though such land may be contiguous with the land described above as the Second Addition to Kerry Downs, a subdivision of Inverness.

ARTICLE I

MUTUALITY OF BENEFIT AND OBLIGATION

SECTION 1.1 The restrictions and agreements set forth herein are made for the mutual and reciprocal benefit of each and every lot in the Subdivision and are intended to create mutual, equitable servitudes upon each of said lots in favor of each and all the other lots therein, to create reciprocal rights between the respective owners of said lots; and to create a privity of contract and estate between the grantees of said lots, their heirs, successors and assigns.

ARTICLE II

ARCHITECTURAL CONTROL COMMITTEE AND REQUIREMENTS OF CONSTRUCTION

SECTION 2.1 Concept. It is intended that the Subdivision development will be a residential community of high esteem and quality homes in a delightful recreation-oriented environment.

2.2 Architectural Control Committee. The Architectural Control Committee (herein referred to as the "Committee") shall be composed of not less than three (3) members and at all times, regardless of the number on the Committee, at least two-thirds (2/3) of the membership of the Committee shall be composed of owners of lots in the Subdivision. Provided, however, that Developer reserves the right to appoint the initial and successor members of the Committee, none of whom need be an owner of a lot in the Subdivision, until December 31, 2010, or until Developer elects to terminate its control of the Committee, whichever shall first occur. After terminating control of the Committee by Developer, as aforesaid, then the Master Homeowners Association, if formed, or if not, then the record owners of a majority of the lots in this Subdivision shall have the power, through a duly recorded written instrument, to change the membership of the Committee or to withdraw from the Committee or restore it to any of its powers and duties. Neither the members of the Committee, nor its designated representatives, shall be entitled to any compensation for services performed pursuant to this covenant. A majority of the Committee may designate one or more representatives to act for it.

The primary authority of the Committee shall be to examine and approve or disapprove all initial and subsequent plans, including site plans, for construction of improvements on lots within this subdivision in accordance with the provisions of these covenants. The Committee shall have such other responsibilities, duties and authority as provided for herein, but the Committee shall not have any responsibility, duty, power or authority not provided for herein.

2.3 Plan Approval. All plans and specifications for any structure or improvement whatsoever to be erected on or moved upon or to any lot, and the proposed location thereof on any lot or lots, the construction material, exterior paint and finishes, the roofs, landscaping, and later changes or additions after initial approval thereof and any remodeling, reconstruction, alterations or additions thereto on any lot shall be subject to and shall require the approval in writing of the Committee before any work is commenced. THE SCOPE OF REVIEW BY THE COMMITTEE SHALL BE LIMITED TO APPEARANCE ONLY AND SHALL NOT INCLUDE ANY RESPONSIBILITY OR AUTHORITY TO REVIEW FOR STRUCTURAL SOUNDNESS, COMPLIANCE WITH BUILDING OR ZONING CODES OR STANDARDS, OR ANY OTHER SIMILAR OR DISSIMILAR FACTORS. Commencement of construction prior to a receipt of a Letter of Approval of the Committee, a copy of which must be signed by the Builder, or Owner, and returned to the Committee for retention, is strictly prohibited.

2.4 Review Documents. One set of prints of the drawings and specifications (herein referred to as "plans") for each house or other structure proposed to be constructed on each lot shall be submitted for review and approval or disapproval by the Committee. The scope of review by the Committee shall be limited to appearance only and shall not include any responsibility or authority to review for structural soundness, compliance with building or zoning codes or standards, or any other similar or dissimilar factors. The plans submitted to the

Committee shall be retained by the Committee. Said plans should be delivered to the general office of Inverness at least six (6) business days prior to the date construction is scheduled to commence. Each such plan must include the following:

2.4.1 All plans for structures shall be not less than 1/8" = 1' scale.

2.4.2 All plans must take into consideration the particular topographic and vegetative characteristics of the lot or lots involved.

2.4.3 All plans must state the elevations of all sides of the proposed structure as such sides will be after finished grading has been accomplished.

2.4.4 The foundation and floor plan(s) shall show the existing grade on each elevation in order that the extent of cut and/or fill areas may be easily and clearly determined.

2.4.5 The site plan shall show all outlines, setbacks, all trees over 6" in diameter as measured 2' above ground and the species thereof, drives, fences, and underground trench locations at a scale of 1" = 20'. No tree may be cut or removed until the plan and the siting are approved.

2.4.6 All plans must include a summary specifications list of proposed materials and samples of exterior materials, including paint or other finish samples, which cannot be adequately described and of materials with which the Committee is unfamiliar.

After the plan for the structure is approved, the house or other structure must be staked out and such siting approved by the Committee before tree cutting or grading is done. No tree may be cut or removed until both the plan and the siting are approved by the Committee.

2.5 Design Criteria, Structure.

2.5.1 It is the intent of the Second Addition to the Kerry Downs Subdivision of Inverness to generally present a traditional architectural environment. The following types of exterior materials, among others, are acceptable, subject to final approval of the actual appearance of such materials by the Architectural Control Committee:

- (a) Brick.
- (b) Stone.
- (c) Painted wood siding.
- (d) Aluminum siding.
- (e) Natural-colored asphalt shingles or slate roofing. White roofing of any material is not acceptable.

(f) Paint, in soft tones (which shall not include, among other colors, any high gloss finishes, or pure red), subject to Section 2.5.26.

(g) The Committee shall also consider the occasional use of vertical or horizontal wood siding, stained or bleached, but such materials shall be approved only in those instances where, in the sole opinion of the Committee, the materials blend in with other houses constructed or planned in the general proximity.

In intent, this criteria frowns upon the practice of placing materials on the sides and back of a residence that are essentially different from the front elevation.

2.5.2 Openings of garages should not be visible from the street. In cases where it is unavoidable and openings of garages are visible or partially visible from a street, electric automatic door closers shall be used. No open garage is to face a neighboring yard without screening approved by the Committee. In the event an enclosed garage is not built, then a carport with an enclosed storage area of not less than 80 square feet shall be constructed, such carport and storage area to be designed so as not to be offensive to neighboring lots. The area of the storage area herein shall not be included for the purposes of Section 3.2.

2.5.3 No window air conditioner shall face the front or the side of a residence, nor on the rear of the lots listed in Section 3.2 hereof.

2.5.4 Underground electrical distribution is the intent of this development and no overhead electrical wiring shall be permitted.

2.5.5 All outside radio and T.V. antennas shall be installed in such a way as not to be offensive from the main road and shall be placed on the back side of the chimney where possible; otherwise, they shall be placed on the back side of the roof. No satellite dish of any form shall be allowed.

2.5.6 No plumbing or heating vent shall be placed on the front side of the roof. All vents protruding from roofs shall be painted the same color as the roof covering.

2.5.7 Swimming pools will be permitted. However, fencing of swimming pool areas must be within achieved setback lines.

2.5.8 Dust abatement and erosion control measures shall be provided by the contractor or owner in all stages of construction.

2.5.9 Where possible, brick or stone curved walkways are encouraged. Curved driveways are preferred and the driveway surface must be paved or the surface approved. Concrete is preferred and suggested for driveways.

2.5.10 ALL MAILBOXES SHALL BE CONSTRUCTED AND LOCATED ACCORDING TO PLANS AND SPECIFICATIONS PROVIDED BY DEVELOPER. Such design must be submitted to the Committee for approval concurrently with the house plans.

2.5.11 All houses shall have an outside electric light located at the intersection of the driveway and the street. All such lights shall be operated by a photo-electric cell so as to automatically turn on at dusk and turn off at dawn. ALL SUCH LIGHTS AND POLES SHALL BE CONSTRUCTED AND LOCATED ACCORDING TO PLANS AND SPECIFICATION PROVIDED BY DEVELOPER.

2.5.12 Since the establishment of inflexible building setback lines for location of houses on lots tends to force construction of houses both directly behind and directly beside other homes with detrimental effects on privacy, view, and preservation of specimen trees, no specific setback lines are established by these restrictions. In order to assure that location of houses will be staggered where practical and appropriate, so that the maximum amount of view and breeze will be available to each house and that the structures will be located

with regard to the topography of each individual lot, the Committee reserves unto itself, its successors and assigns, the right to control absolutely and to solely decide the precise site and location of any houses or other structure upon all lots in the Subdivision. Such location shall be determined only after reasonable opportunity is afforded the lot owner to recommend a specific site. Notwithstanding any provision of this Section 2.5.12, no house or building shall be placed nor shall any material or refuse be stored on any lot within 50 feet from the back of the valley gutter(s) adjacent to the lot, or within 20 feet of the property line of any park. Developer reserves the right to establish specific setback lines applicable to any unsold lots in the Subdivision.

2.5.13 During construction, all vehicles, including those delivering supplies, must enter the building site only on driveways approved by the Committee and such vehicles must be parked on the building lot where the construction is underway so as to not unnecessarily damage trees.

2.5.14 All building debris, stumps, trees, etc., must be removed from each lot by builder as often as necessary to keep the house and lot attractive. Such debris shall not be dumped in any area of Inverness.

2.5.15 During construction, builder must keep homes and garages clean and yards cut.

2.5.16 There shall be no silver finish metal doors (including glass sliding doors) or silver finish metal windows of any kind; however, a factory painted or dark anodized finish metal may be used. The color of such finish must be approved by the Committee.

2.5.17 Chain link, wire, or metal fences of any type may not be used for any purpose. All fences, including fences for backyards, swimming pools, dog pens, gardens, or for any other purpose must be approved by the Committee prior to construction. No fence of any kind shall be permitted in the front yard of any lot, or on the rear of any lot which has a rear lot line adjacent to a lake or the Golf Course Property; provided, however, that approved fences shall be allowed, for pool purposes only, on the rear of lots which have a rear lot line adjacent to the Golf Course Property, and all such fences shall provide access from the golf course for golf ball retrieval. In addition, no prominent structure shall be permitted on the rear thirty (30) feet of any lot which has a rear lot line adjacent to a lake or Golf Course Property.

2.5.18 There shall be no signs nailed to trees at any time. All builders' and contractors' signs are to be removed from the lot after the house has been completed.

2.5.19 All proposed exterior redecorating, including painting, must be approved by the Committee or its successors or assigns.

2.5.20 All lakes are specifically restricted in use to sailboats and boats with electric trolling motors, canoes, paddle boats, and row boats.

2.5.21 Drainage of surface water, storm water, and/or foundation drains may not be connected to sanitary sewers.

2.5.22 No outside clothes lines shall be permitted.

2.5.23 Exterior liquified fuel storage containers shall be permitted, but such containers must be screened with materials acceptable to, and in a manner approved by the Committee so as not to be visible from the street, from adjoining lots, or from the golf course. THE SCOPE OF REVIEW BY THE COMMITTEE SHALL BE LIMITED TO APPEARANCE ONLY AND SHALL NOT INCLUDE ANY RESPONSIBILITY OR AUTHORITY TO REVIEW FOR STRUCTURAL SOUNDNESS, COMPLIANCE WITH BUILDING OR ZONING CODES OR STANDARDS, SAFETY CONSIDERATIONS, OR ANY OTHER SIMILAR OR DISSIMILAR FACTORS.

2.5.24 Existing drainage shall not be altered in any manner, and specifically shall not be altered in such a manner as to divert the flow of water onto an adjacent lot or lots or onto the golf course.

2.5.25 Developer reserves the right to make exceptions to architectural guidelines in the event solar heating is to be used, such exceptions to be made on a case by case basis considering the design's compatability with the neighborhood.

2.5.26 Without the prior written consent of the Committee, no house shall have exterior block walls covered with stucco paint or masonry paint.

The Architectural Control Committee reserves the right to change, alter, add to and make exceptions from the above regulations from time to time at its discretion.

2.6 Neither the Committee nor any architect nor agent thereof nor Developer shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the foregoing provisions, nor for any structural or other defects in any work done according to such plans and specifications. It is specifically agreed that the scope of review by the Committee shall be limited to appearance only and shall not include any responsibility or authority to review for structural soundness, compliance with building or zoning codes or standards, or any other similar or dissimilar factors.

ARTICLE III

EXCLUSIVE RESIDENTIAL USE AND IMPROVEMENTS

SECTION 3.1 All lots in the Subdivision shall be known and described as residential lots and shall be used for single family residential purposes exclusively and no lot shall be subdivided so as to increase the number of lots in the Subdivision. No structure, except as otherwise provided, shall be erected, altered, placed or permitted to remain on any residential building lot other than one detached single family residence dwelling not to exceed two (2) stories or twenty-one (21) feet front plate height, or, on uphill lots, three (3) stories or twenty-eight (28) feet front plate height, and a private garage for not more than three (3) cars. This shall not prohibit the construction of one residence upon two (2) or more lots.

3.2 Except as otherwise provided, every dwelling building erected on any lot in the Second Addition to the Kerry Downs Subdivision, exclusive of one-story open porches, garages, carports and other unairconditioned, unfinished spaces, shall each have not less than 2,200 square feet of floor space, with a ceiling height of not less than seven (7) feet six (6) inches in all enclosed, heated, habitable areas. The first or main floor area of each such dwelling building, exclusive of one-story open porches, garages, carports and finished basements, shall be not

less than 2,200 square feet in the case of a one-story structure and not less than 1,600 square feet in the case of a one and one-half, two, and two and one-half or three-story structure.

3.3 No more than a single family unit shall occupy any dwelling house. Detached auxiliary buildings are not permitted without prior written approval of the Committee. All dwellings must be built within the building lines shown on the recorded plat for Heather Point (the Second Addition to Kerry Downs).

ARTICLE IV

GENERAL PROHIBITIONS AND REQUIREMENTS

SECTION 4.1 It shall be the responsibility of each lot owner to prevent the development of any unclean, unsightly or unkept conditions of buildings or grounds on such lot which shall tend to decrease the beauty of the specific area or of the neighborhood as a whole.

4.2 All lots, whether occupied or unoccupied, and any improvements placed thereon, shall at all times be maintained in a neat and attractive condition and in such manner as to prevent their becoming unsightly by reason of unattractive growth on such lot or the accumulation of rubbish or debris thereon. In order to implement effective control of this item, Developer reserves for itself, its agents and the Committee the right, after ten (10) days' notice to any lot owner, to enter upon any residential lot with such equipment and devices as may be necessary for the purpose of mowing, removing, clearing, or cutting underbrush, weeds or other unsightly growth and trash which in the opinion of the Developer or the Committee detracts from the overall beauty and safety of the Subdivision. Such entrance upon such property for such purposes shall be only between the hours of 7:00 a.m. and 6:00 p.m. on any day except Sunday and shall not be a trespass. Developer or the Committee may charge the owner a reasonable cost for such services, which charge shall constitute a lien upon such lot enforceable by appropriate proceedings at law or equity. The provisions of this paragraph shall not be construed as an obligation on the part of Developer or the Committee to mow, clear, cut or prune any lot nor to provide garbage or trash removal services. Also, all maintenance for the common areas of Heather Point will be the responsibility of the property owners within Heather Point. These areas include, but are not limited to, the entrance and cul-de-sac plantings.

4.3 No animals, livestock or poultry of any kind or description except the usual household pets shall be kept on any lot; provided, however, that no household pet may be kept on any lot for breeding or commercial purposes; provided further, that any household pets must be kept on a leash when permitted to be outside.

4.4 No noxious, offensive or illegal activities shall be carried on upon any lot nor shall anything be done on any lot which may be or may become an annoyance or nuisance to the neighborhood. No commercial activity shall be carried on on any lot.

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

4.6 No trash, garbage or other refuse shall be dumped, stored or accumulated on any lot. Trash, garbage or other waste shall not be kept on any lot except in sanitary containers or garbage compactor units. Garbage containers, if any, shall be kept in a clean and sanitary condition, and shall be so placed or screened by shrubbery or other appropriate material approved in

BOOK 092 PAGE 197

writing by the Committee as not to be visible from any road, waterway, or golf course within sight distance of the lot at any time. All garbage shall be picked up in the rear of the house on a lot. It is prohibited for any garbage containers to be placed or left for pick-up in the street or otherwise in a place that is visible from any road, waterway or golf course. No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted. The owner of each lot shall contract with the authorized agent in Shelby County for the collection of trash, refuse and garbage.

4.7 All signs, billboards or advertising structures of any kind are prohibited except builder and subcontractor signs during construction periods as authorized in Section 2.5.18 above, and except one professional sign of not more than 6 square feet to advertise the property for sale during sales period. No sign is permitted to be nailed or attached to trees. No "for sale" sign shall be permitted on the rear of any lot facing the golf course.

4.8 No structure of a temporary character, trailer, basement, tent or shack shall be used at any time as a residence either temporarily or permanently. There shall be no occupancy of any dwelling until the interior and exterior of the dwelling are completed and a certificate, or other satisfactory evidence, of completion is received by and approved by the Committee.

4.9 Any dwelling or other structure on any lot in the Subdivision which may be destroyed in whole or in part for any reason must be rebuilt within one (1) year. All debris must be removed and the lot restored to a slightly condition with reasonable promptness, provided that in no event shall such debris remain on any lot longer than sixty (60) days.

4.10 No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between 2 and 6 feet above any roadway shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points 25 feet from the intersection of the street lines, or in the case of a rounded property corner from the intersection of the street property lines extended. The same sight-line limitations shall apply on any lot within 10 feet from the intersection of a street property line with the edge of a driveway or alley pavement. Except as herein provided, no trees shall be permitted to remain within such distance of such intersections unless the foliage is maintained at sufficient height to prevent obstruction of such sight-lines. Any such tree of a rare or unusual species may be permitted to remain in place upon application to and written permission from the Committee and approval by the appropriate city, county or state official or department.

4.11 No boat, boat trailer, house trailer, camper or similar equipment or vehicle shall be parked or stored on any road, street, driveway, yard or lot located in the Subdivision for any period of time in excess of 24 hours except in garages. Also, no unkept or otherwise unattractive vehicle or piece of equipment may be parked or stored on any road, street, driveway, yard or lot except in garages.

4.12 NO TREE HAVING A DIAMETER OF SIX (6) INCHES OR MORE (MEASURED FROM A POINT TWO FEET ABOVE GROUND LEVEL), NOR ANY FLOWERING TREES OR SHRUBS, SHALL BE REMOVED FROM ANY LOT AFTER COMPLETION OF CONSTRUCTION WITHOUT THE EXPRESS WRITTEN AUTHORIZATION OF THE COMMITTEE. If it shall deem it appropriate, the Committee may mark certain trees, regardless of size, as not removable without written authorization. The Committee is hereby

authorized to come onto any lot during reasonable hours for the purpose of inspecting or marking trees, and any such entry by the Committee or its agent(s) shall not be deemed as trespass or other wrongful act.

4.13 There shall be no discharging of any type firearm or other weapon in the Second Addition to the Kerry Downs Subdivision of Inverness or any other area of the Inverness community.

ARTICLE V

EASEMENTS

SECTION 5.1 An easement to permit the doing of every act necessary and proper to the playing of golf on the golf course adjacent to the lots which are subject to these restrictions is hereby granted and established. These acts shall include, but not be limited to, entering onto the lot for the purpose of golf ball retrieval, provided such golf balls can be recovered without damaging any flowers, shrubbery or the property in general; the flight of golf balls over and upon such lots; the use of necessary and usual equipment upon such golf course; the usual and common noise level created by the playing of the game of golf; together with all other common and usual activity associated with the game of golf and with all the normal and usual activities associated with the operation of a country club.

5.2 Residential landscaping should enhance the privacy of the dwelling units; however, it is the intent of the community to maintain the greenbelt and common property areas without strict definition of property lines, and it is hoped that the resident owners will adhere to this intent. It is intended that the natural ground cover of the land can weave throughout the residential development without being impeded by lots totally planted in grass without recognition of the natural elements of the land.

5.3 An easement thirty (30) feet in width, unless otherwise specified, and bounded on one side by the entire lot boundary line or lines which define the Inverness Country Club Golf Course property is hereby retained and reserved over each of said lots adjacent to the Inverness Country Club Golf Course for the purpose of maintaining a natural buffer area between golf and residential uses. No fence, wall, hedge or shrub planting which would obstruct access to the property covered by said easement from the golf course shall be placed or permitted to remain on lots. No tree four inches or more in diameter measured at a point two feet above the average height of the ground at the base, nor any shrub or dogwood tree of any size may be removed from this easement area without the specific prior approval of Developer or its successors or assigns. Violation of this covenant shall be subject to a liquidated damage sum of \$40.00 per inch of diameter measured as hereinbefore specified for each tree, \$20.00 for each shrub and \$100.00 for each dogwood tree removed without the specified authorization, except the maximum liquidated damages shall not exceed \$2,000.00 for any lot. The recovery of such liquidated damages shall be available to Developer and its successors and assigns in title to the Inverness Country Club Golf Course. Developer reserves the right to make selected plantings of trees and other vegetation within the 30 foot easement in order to establish and maintain a buffered relationship between the golf and residential uses as herein intended. Developer hereby covenants to provide the owner of any lot with a description of the work to be done at least 14 days in advance of the actual work so that the mutual interests and desires of the owner and Developer may be properly coordinated.

BOOK 092 PAGE 199

5.4 Unless otherwise indicated, an easement thirty (30) feet in width and bounded on one side by Lake Heather is hereby retained and reserved over each of said lots adjacent to Lake Heather. No fence, wall, hedge or shrub planting which would obstruct access to the property covered by said easement shall be placed or permitted to remain on lots. No tree four inches or more in diameter measured at a point two feet above the average height of the ground at the base, nor any shrub or dogwood tree of any size may be removed from this easement area without the specific prior approval of Developer or its successors or assigns. Violation of this covenant shall be subject to a liquidated damage sum of \$40.00 per inch of diameter measured as hereinbefore specified for each tree, \$20.00 for each shrub and \$100.00 for each dogwood tree removed without the specified authorization, except the maximum liquidated damages shall not exceed \$2,000.00 for any lot. The recovery of such liquidated damages shall be available to Developer and its successors and assigns. Developer reserves the right to make selected plantings of trees and other vegetation within the 30 foot easement in order to establish and maintain a buffered relationship between the lake and residential uses as herein intended. Developer hereby covenants to provide the owner of any lot with a description of the work to be done at least 14 days in advance of the actual work so that the mutual interests and desires of the owner and Developer may be properly coordinated.

5.5 Lot owners should recognize that at some future date Developer may dedicate the lake to the Inverness Community, a Master Homeowners Association or otherwise. In such event, and provided the lot owner's property includes shoreline along said lake or access thereto, the lot owner and its successors and assigns shall be required to pay its pro rata share of any and all expenses or cost of so maintaining the lake for such time as these restrictions remain in force.

Lot owner(s) pro rata share shall be computed by multiplying total lake maintenance expenses by a fraction, the numerator of which represents lot owner(s) shoreline footage (or shoreline access) and the denominator represents total lake shoreline footage.

5.6 Every lot in the Subdivision that abuts on or lies contiguous to a lake, pond, stream or water way, natural or artificial, shall be subject to an inundation or a flowage easement to an elevation above mean sea level as established by the United States Coast and Geodetic Survey, as adjusted in January, 1955.

No permanent structure may be constructed or placed in such flowage easement area. Each lot owner also agrees, by acceptance of a deed to a lot, to assume, as against Developer, 2154, their successors or assigns, all the risks and hazards of ownership or occupancy attendant to such lots, including but not limited to its proximity to golf course fairways and waterways.

5.7 Developer reserves for itself, its successors and assigns the right to use, dedicate and/or convey to the State of Alabama, to Shelby County, and/or to the appropriate utility company or other companies, rights-of-way or easements on, over or under the ground to erect, maintain and use utilities, electric and telephone poles, wires, cables, cable television, conduits, storm sewers, sanitary sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water, or other public conveniences or utilities, on, in and over strips of land ten (10) feet in width along the rear property line of each lot, and ten (10) feet in width along each side line of each lot; with a further easement reserved to cut or fill a 3-in-1 slope along the boundaries of all public streets or roads built in this Subdivision.

5.8 Drainage flow shall not be obstructed or diverted from drainage swales, storm sewers and/or utility easements as designated herein, or as may hereafter appear on any plat of record in which reference is made to these covenants. Developer may cut drainways for surface water wherever and whenever such action may appear to Developer to be necessary in order to maintain reasonable standards of health, safety and appearance. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health and appearance. Except as provided herein, existing drainage shall not be altered in such a manner as to divert the flow of water onto an adjacent lot or lots or onto the Inverness Country Club golf course. The provision hereof shall not be construed to impose any obligation upon Developer to cut such drainway.

5.9 Developer reserves the right to impose further restrictions and to grant or dedicate additional easements and roadway rights-of-way on any unsold lots in the Subdivision.

5.10 Developer reserves for itself, its successors and assigns an exclusive easement for the installation or maintenance of radio and television cables within the rights-of-way and easement areas referred to.

ARTICLE VI

PROPERTY OWNERS ASSOCIATION

SECTION 6.1 If at any time, from this date forward, a master homeowners association is established or developed within the Inverness community, then each owner of land herein or any subdivided portions thereof, is responsible to join and become a part of said master homeowners association and is required to pay the dues or assessments which may be established by said master homeowners association and agrees to be bound by the rules, regulations and requirements established by said master homeowners association.

6.2 Each and every lot owner and future lot owner, in accepting a deed or contract for any lot or lots in the Second Addition to Kerry Downs agrees to pay to Developer or other appropriate authorities the charges and fees provided for in Article VII and to the Master Homeowners Association, when formed, any annual assessments or charges and special assessments from time to time fixed or established by such Association in accordance with the Articles of Incorporation and/or By-Laws for such Association. It is agreed that the regular and special assessments, together with interest and cost of collection, shall be charged on the land and constitute a continuing lien upon the lot against which assessment is made, except that such lien shall be subordinate to prior recorded bona fide mortgages. Each assessment, together with such interest thereon and cost of collection thereof, shall be the personal obligation of the person owning such property at the time the assessment fell due.

ARTICLE VII

SEWAGE TREATMENT FACILITY AND CHARGES

SECTION 7.1 Individual sewage disposal systems shall not be permitted on any lot unless a central sanitary sewage system is not otherwise available, and any such individual sewage disposal system is first approved by Developer and all appropriate

governmental agencies. The sewage treatment facility available to the Second Addition to Kerry Downs is currently provided by Developer. By accepting a deed to a lot, the owner of such lot covenants and agrees to pay to Developer or its successors or assigns, monthly or quarterly sewage treatment fee or charge to cover the cost of providing such service. In the event a governmental authority or agency assumes operation of the sewage treatment facility or function, such governmental authority or agency will set the rates, fees or charges for such service and any limitation contained in this Article VII shall then be inapplicable. The sewage treatment fee shall be charged upon a lot immediately upon tap-on to the central sanitary sewage system, regardless of whether the house constructed upon said lot is then completed, sold, or occupied. The first monthly or quarterly sewage treatment fee (as prorated for the remainder of the current billing period) shall be due at the time of tap-on to the central sanitary sewage system, and charges shall thereafter be due at regular quarterly or other billing intervals as established by Developer. It is agreed that the sewage treatment fee shall be charged on the land and constitute a continuing lien upon the lots against which such fee is charged, except that such lien shall be subordinate to prior recorded bona fide mortgages. Such fee charged and the cost of collection thereof shall be the personal obligation of the person owning such property at the time the fee becomes due. The owner of a lot covenants and agrees to maintain the sanitary sewer service line on his lot in good repair. The Developer shall establish rules and regulations for the installation and inspection of sanitary sewer service lines. THE MATERIAL FOR SANITARY SEWER SERVICE LINES MUST BE APPROVED BY THE DEVELOPER AND POLY VINYL CHLORIDE (PVC) SEWER PIPE (SCHEDULE 40) AND FITTINGS ARE REQUIRED IN ALL SECTIONS OF THE PROPERTY AND SHALL CONFORM TO THE REQUIREMENTS OF ASTM SPECIFICATIONS D 3034 OR D 3033. Without limitation upon other inspection rights, in order to implement inspection and testing of sanitary sewer lines, each owner agrees to give written notice to the Developer within 2 working days prior to its installation of the sanitary sewer service lines and to permit such inspection and testing thereof by the Developer both before and after backfill as is required by the Developer. If any owner fails to give the Developer notice of the installation of the sanitary sewer service lines, as provided herein, or fails to permit the testing specified above, then he shall be fined in the amount of \$500.00, such amount to constitute liquidated damages for the additional cost of inspecting the service lines after the work is completed.

7.2 Fire protection is currently provided to the Inverness community, which will include the real estate subject to this declaration, by the North Shelby County Fire and Medical District. Each owner of this land or any subdivided portion hereof shall be responsible to pay a proportionate share of the cost of said protection or a fee which is established by said Fire District for individual dwelling protection. If, at any future date, uniform community fire protection is provided by the Inverness community, or any subsequently established homeowners association, then each owner of this land or any subdivided portion hereof, shall be responsible to pay a proportionate share of the cost of said protection. INVERNESS OR DEVELOPER IS UNDER NO OBLIGATION TO PROVIDE FIRE PROTECTION SERVICE, OR TO ASSURE THAT SUCH FIRE PROTECTION SERVICE IS PROVIDED BY OTHERS.

7.3 Police protection is currently provided to the Inverness community, which will include the real estate subject to this declaration, by the Shelby County Sheriff's Department. If, at any future date, uniform community security protection is provided by the Inverness community, or any subsequently established homeowners association, then each owner of this land or any subdivided portion hereof, shall be responsible to pay a proportionate share of the cost of said protection.

INVERNESS OR DEVELOPER IS UNDER NO OBLIGATION TO PROVIDE SECURITY SERVICE, OR TO ASSURE THAT SUCH SECURITY SERVICE IS PROVIDED BY OTHERS.

7.4 The fire hydrants located in the Second Addition to Kerry Downs are owned and maintained by the Water Works Board of the City of Birmingham. A standard rental fee for such fire hydrants is currently being paid by the North Shelby County Fire and Medical District. In the event that the standard rental fee for such fire hydrants in the Second Addition to Kerry Downs should cease to be paid by the North Shelby County Fire and Medical District or any other public corporation, authority or governmental agency, then, in such event, each owner of the real estate subject to this declaration, or any subdivided portion thereof, shall be responsible to pay a proportionate share of such standard rental fee.

ARTICLE VIII

ENFORCEMENT

SECTION 8.1 In the event of a violation or a breach of any of these restrictions, or any amendments thereto by any property owner, or family of such owner, or agent of such owner; the owner(s) of lot(s), Developer, its successors and assigns, the Committee, the Master Homeowners Association when formed, or any other party to whose benefit these restrictions inure shall have the right to proceed at law or in equity to compel compliance with the terms and conditions hereof, to prevent the violation or breach of said restrictions, to sue for and recover damages or other dues, or take all such courses of action at the same time, or such other legal remedy it may deem appropriate. No delay or failure on the part of an aggrieved party to invoke an available remedy set forth herein shall be held to be a waiver of that party or an estoppel of that party or of any other party to assert any right available to him upon the recurrence or continuation of said violation or the occurrence of a different violation. Neither the Committee nor any architect nor agent thereof nor Developer shall be responsible in any way for any delay or failure by any or all of such entities, their successors and assigns, to enforce or seek to enforce any violation or breach of any of these restrictions, or amendments thereto.

8.2 Each and every lot owner and future lot owners, in accepting a deed or contract for any lot or lots in the Second Addition to the Kerry Downs Subdivision, agrees to adhere to these Protective Covenants governing the Second Addition to the Kerry Downs Subdivision. If said lot owner(s) does not adhere to said covenants and legal action is taken against the party in violation of said covenants, then the lot owner(s) in violation agrees to pay all attorney fees and other associated costs incurred by other parties in pursuing legal action to remedy violations of these covenants.

ARTICLE IX

GRANTEE'S ACCEPTANCE AND INDEMNIFICATION AGREEMENT

SECTION 9.1 The grantee of any lot subject to the coverage of these Restrictions, by acceptance of the deed or other instrument conveying an interest in or title to, or the execution of a contract for the purpose thereof, whether from Developer or a subsequent owner of such lot, shall accept such deed or other contract upon and subject to each and all of these restrictions and the agreements herein contained.

9.2 Each and every lot owner and future lot owner, in accepting a deed or contract for any lot or lots in the Second Addition to Kerry Downs, whether from Developer or a subsequent owner of such lot, agrees to indemnify and reimburse Developer for any damage caused by such lot owner or the contractor, agent or employees of such lot owner, to roads, streets, gutters, walkways or other aspects of public ways, including all surfacing thereon, or to water, drainage or storm sewer lines or sanitary sewer lines owned by Developer, or for which Developer has responsibility, at the time of such damage.

9.3 Each and every lot owner and future lot owner, in accepting a deed or contract for any lot or lots in the Second Addition to Kerry Downs, whether from Developer or a subsequent owner of such lot, agrees and covenants to release, indemnify, protect and hold harmless the Developer, its successors or assigns, and its agents, directors and employees (all of whom are included in the term "Developer" for the purposes of this Section 9.3) from and against any and all claims, and demands by such owner, any member of his or her family, their employees, agents, guests, invitees, licensees, contractors, and employees or subcontractors of such contracts, or any other persons whomsoever, for damages to property and injury or death including but not limited to, the Developer's contributory negligence) which may arise out of or be caused directly or indirectly by such owner's lot or lots, and/or the use of or construction on said lot or lots by said owner, any member of his or her family, their guests, agents, invitees, licensees, contractors, or employees or subcontractors of such contractors, or by any other person whomsoever. The indemnification by such owner as set forth above shall also cover any and all expenses of Developer, including attorneys' fees, resulting from any claims or demands.

9.4 Each and every lot owner and future lot owner, in accepting a deed or contract for any lot or lots in the Second Addition to Kerry Downs, whether from Developer or a subsequent owner of such lot, agrees, in connection with the construction of any improvements on such lot or lots, to exercise due care, and to assure that any contractors of such owner, or employees and subcontractors of such contractors, will exercise due care and will comply with any and all governmental rules, regulations, codes and ordinances relating to safety, so as to protect the safety and health of the public, and the safety and health of such owner, his or her family, and any such contractor and its employees and subcontractors.

ARTICLE X

TERM AND MODIFICATION

SECTION 10.1 These covenants and restrictions shall run with the land and can be changed, modified, amended, altered or terminated only by a duly recorded written instrument executed by the Developer, its successors and assigns, until twenty (20) years from the date hereof, and thereafter by the then record owners (including mortgagees and other lien holders of record, if any) of fifty-one percent (51%) of the number of lots of this Subdivision.

ARTICLE XI

SEVERABILITY

SECTION 11.1 Every one of the Restrictions is hereby declared to be independent of, and severable from the rest of the restrictions and of and from every other one of the restrictions and of and from every combination of the restrictions. Invalidation by any court of any restriction in this instrument shall in no way affect any of the other restrictions which shall remain in full force and effect.

11.2 Developer may include in any contract or deed hereinafter made or entered into, such modifications and/or additions to these protective covenants and restrictions, which will by their nature raise the standards of the Subdivision.

ARTICLE XII

CAPTIONS

SECTION 12.1 The captions preceding the various paragraphs and subparagraphs of these Restrictions are for the convenience of reference only, and none of them shall be used as an aid to the construction of any provision of the Restrictions. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

IN WITNESS WHEREOF, 2154 TRADING CORPORATION, a corporation, doing business as INVERNESS, has caused these Restrictions to be properly executed by Taylor & Mathis of Alabama, Inc., its agent, and recorded in the Office of the Judge of Probate of Shelby County, Alabama.

BOOK 092 PAGE 205

ATTEST:

By:

[Signature]
Its: Assistant Project Mgr

TAYLOR & MATHIS OF ALABAMA, INC.,
as agents for 2154 TRADING
CORPORATION, doing business as
INVERNESS

By:

[Signature]
Its: Operations Manager

Date Executed: 9-23-86

STATE OF ALABAMA)

COUNTY OF)

I, Sandra G. Davis, a Notary Public in and for said County, in said State, hereby certify that Nona M. Sandorfer, whose name as OPERATIONS MANAGER of Taylor & Mathis of Alabama, Inc., a corporation, as agents for 2154 Trading Corporation, a corporation doing business as INVERNESS, is signed to the foregoing Declaration of Protective Covenants, and who is known to me, acknowledged before me on this day that, being informed of the contents of said Declaration of Protective Covenants, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation, acting in its capacity as agent for said 2154 Trading Corporation, a corporation doing business as INVERNESS.

Given under my hand and official seal, this the 23rd day of SEPTEMBER, 1986.

[Signature]
Notary Public

My Commission Expires April 29, 1989

STATE OF ALA. SHELBY CO.
I CERTIFY THIS
INSTRUMENT WAS FILED

1986 SEP 25 PM 2:13

[Signature]
JUDGE OF PROBATE

RECORDING FEES

Recording Fee	\$ <u>37.50</u>
Index Fee	<u>1.00</u>
TOTAL	\$ <u>38.50</u>

