

2784

STATE OF ALABAMA)
COUNTY OF SHELBY)

DECLARATION OF PROTECTIVE COVENANTS
BERRYHILL - FIRST SECTOR

KNOWN ALL MEN BY THESE PRESENTS, That:

WHEREAS, Goggans Development Co., Inc., (the Developer) has heretofore acquired fee simple title of certain real property situated in Shelby County, Alabama and has subdivided such property into 12 Lots ("Lots") as described in the map and survey of Berryhill, First Sector as recorded in Map Book 14, Page 43 in the Probate Office of Shelby County, Alabama (the "Property");

NOW THEREFORE, the Developer does, upon recording hereof, declare and make the Property and each of the Lots included in the subdivision of the Property subject to the covenants, conditions, restrictions, uses, limitations and affirmative obligations set forth in this Declaration, all of which are declared to be in furtherance of a plan for the improvement of the Property in a desirable and uniform manner suitable in architectural design, and all of which shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in the Property or any part therein, and shall inure to the benefit of and be binding upon each successor in interest to the owners thereof.

ARTICLE I

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James Buford

LAND USE AND BUILDING TYPE

1. LAND USE AND BUILDING TYPE: The Property will be used for residential purposes only and no trade or business purposes including all types of home industry will be permitted. No building or structure other than a one family dwelling house shall be erected with the Property except as otherwise permitted herein.

ARTICLE II

BUILDING REQUIREMENTS

1. MINIMUM STRUCTURE SIZE: The main residential structure erected or placed on any Lot within the Property shall include not less than the minimum amount of living space set forth herein. Living space is defined as heated or finished area and does not include porches, garages, basements, carports or attics.

The minimum living space for the main residential structure on the Lots is as follows:

(a) Sector I: Lots 6 thru 11, 26 thru 31: Minimum of 1,400 square feet for one story homes and 1,500 square feet for multi-level homes.

2. DESIGN CRITERIA: The objective of the Architectural Control Committee (the "Committee"), established pursuant to Article III, shall be to present a traditional architectural environment for the Property. Accordingly, the Committee shall be directed to encourage the development of traditionally designed homes (i.e.

Williamsburg, French, Georgian and Colonial), and the Committee is directed to discourage contemporary exterior designs.

3. EXTERIOR DESIGN CRITERIA: The exterior design of the structures within the Property shall be in accordance with the following, subject to final approval by the Committee:

(a) The exterior materials which are acceptable to the Committee shall include brick, stone, stucco, painted wood or Masonite siding. All horizontal lapped siding shall have a maximum of eight inches (8") per board exposed to weather. Any exception must be approved in writing by the Committee.

(b) Exterior painting will be in soft tones not to include high gloss finishes or pure red.

(c) Roofs on all structures must have a minimum 6/12 pitch. No Gambrel or Mansard roofs will be permitted. Shingles must be of a natural color. No white roofing materials of any kind will be permitted.

(d) All stack pipes, exhaust fans, and other roof projections shall be located on the rear or side of building roofs, and painted to match the approved roof color.

4. TEMPORARY DWELLINGS: No trailer, tent, shack, barn, servant house, garage or outbuilding shall be erected on any Lot within the Property prior to the completion of the dwelling house or at any time thereafter.

5. BUILDING LOCATION: The location of any structure, alteration, or addition in relation to the front, and side boundaries of any Lot within the Property will be determined according to the recorded plat map of the subdivision. Said plat map requires a front set back line of 35', rear set back line of 30', and side set back lines of 10'.

6. FENCES AND HEDGES: No fences or walls shall be constructed unless first approved by the Committee. The approval of the Committee shall be governed by the following:

(a) No fences or walls may be built above the grade of the Lot in front of the rear line of the main residential dwelling house, except any fence or wall which appears to the Committee to be an integral part of the architecture.

(b) On corner lots, no fence may protrude into the side yard on the side nearest the adjoining street.

(c) On corner lots, no fence may protrude beyond the building line of any adjacent lot.

(d) No chain link, wire, or metal fence of any kind may be constructed in front of any dwelling.

(e) No hedges may exceed three feet in height in front of the residential dwelling house.

7. UTILITIES, WIRING AND ANTENNAS:

(a) No external or outside antennas, including

satellite dishes, of any kind shall be maintained.

(b) To the extent of the interest of the owner of each Lot, such owners agree to connect utility service lines (including, but not limited to, gas, water, sewer, cable television and electricity) at points designated by the Developer.

8. EASEMENTS: Easements to each Lot for the installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat of the Property in Map Book 14, Page 43 in the Probate Office of Shelby County, Alabama.

9. MAILBOXES: All mailboxes and posts must be constructed and located according to the Developer's specifications.

10. LANDSCAPING: Each Lot must have at least 40% of its front lawn covered with sod. No seeding of front lawn is permitted. Remaining areas may be left natural or sprigged.

11. WALLS: No crosstie walls in front of building line.

ARTICLE III

ARCHITECTURAL CONTROL

1. APPROVAL OF ARCHITECTURAL CONTROL COMMITTEE: No structure, building or fence shall be commenced, erected, placed, moved onto or permitted to remain on any Lot within the Property, nor shall any existing structure upon any Lot within the Property be altered in any way which

materially changes the exterior appearance thereof, unless plans and specifications thereof shall have first been submitted to and approved by the Architectural Control Committee (herein defined). Such plans and specifications shall be in such form and shall contain such information, as may be required by the Architectural Control Committee and shall include, but not necessarily be limited to:

(a) a site plan of the Lot showing the location, height and exterior design (including a summary of all proposed materials together with samples of exterior materials and paint colors) of all buildings and improvements proposed to be constructed on the Lot,

(b) a grading and drainage plan for the Lot.

The plans shall be submitted to the Architectural Control Committee at the general office of the Developer at least five days prior to the date construction is scheduled to commence and the Architectural Control Committee shall be entitled to retain said plans for its records.

2. ARCHITECTURAL CONTROL COMMITTEE: The Architectural Control Committee (the "Committee") shall be composed of three individuals initially designated by the Developer. In the event of death, resignation or incapacity of any member of the Committee, the remaining members shall have full authority to designate a successor. Each Committee member will serve if able, until a successor is appointed. In the event that any one of the Committee members is

unable to meet, for any reason, then the remaining member(s) shall have all necessary authority and power to make decisions. The affirmative vote of a majority of the members of the Committee shall be required in order to issue any permit, authorization of approval pursuant to the directives or authorizations set forth herein. The Committee's approval or disapproval as required in these Covenants shall be in writing. In the event the Committee fails to approve or disapprove plans submitted to it within sixty (60) days after plans and specifications and all other requested information have been submitted to it, approval will deem to have been given and related Covenants shall be deemed to have been fully complied with.

3. EVIDENCE OF APPROVAL: The approval of the Committee shall be evidenced by a written permit executed by one or more members of the Committee and countersigned by the applicant therefore. The written permit shall be executed in duplicate with one copy to be retained by the applicant.

4. BASIS FOR DISAPPROVAL OF PLANS:

(a) The scope of review by the Committee shall be limited to appearance only. THE COMMITTEE DOES NOT ASSUME OR ACCEPT BY THE FILING HEREOF ANY RESPONSIBILITY OR AUTHORITY TO REVIEW FOR STRUCTURAL SOUNDNESS, COMPLIANCE WITH BUILDING OR ZONING CODES OR STANDARDS, OR ANY OTHER FACTORS.

(b) The Committee shall have the right to disapprove any plans and specifications submitted for approval for any of the following reasons:

1. failure of such plans and specifications to comply with the Covenants and Restrictions set forth;

2. failure to include information in such plans and specifications as may have been reasonably requested by the Committee;

3. objection to the exterior design, appearance or materials of any proposed structure or improvement;

4. incompatibility of any proposed structure or improvement or use thereof with existing structures or uses upon other Lots in the Property;

5. objection to the site plan, clearing plan, drainage plan for any parcel;

6. objection to the color scheme, finish, proportions, style or architecture, height, bulk, or appropriations of any proposed structure or improvement;

7. failure of plans to take into consideration the particular topography, vegetative characteristics, and natural environment of the Lot;

8. any other matter which, in the judgment of the Committee, would render the proposed structure, improvement or use inharmonious with the general plan of improvement of the Property or with structures, improvements, or uses located upon other Lots in the Property.

(c) Approval of plans and specifications submitted to the Committee shall terminate and be rendered void if construction is not begun within six (6) months after the date of the certificate evidencing such approval unless such six (6) month period is extended by the Committee in which event the extended time period shall be applicable.

(d) In any case where the Committee shall disapprove any plans and specifications submitted hereunder, or shall approve the same only as modified or upon specified conditions, such disapproval or qualified approval shall be accompanied by a statement of the grounds upon which such action was based. In any such case the Committee shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal can be prepared and submitted for approval.

5. RETENTION OF COPY OF PLANS: Upon approval by the Committee of any plans and specifications submitted hereunder, a copy of such plans and specifications, as approved, shall be deposited for permanent record with the Committee, and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same.

6. FAILURE TO OBTAIN APPROVAL: If any structure or improvement shall be altered, erected, placed, or maintained upon any Lot, or any new use commenced on any Lot, otherwise than in accordance with plans and

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specifications approved by the Committee pursuant to the provisions of this Article III, such alteration, erection, maintenance or use shall be deemed to have been undertaken in violation of this covenant, and without the approval required herein, and, upon written notice from the Committee, any such structure or improvement so altered, erected, placed or maintained upon any Lot in violation hereof shall be removed or realtered, and any use shall be terminated, so as to extinguish such violation.

If fifteen (15) days after the notice of such violation the owner of the Lot upon which such violation exists shall not have taken reasonable steps toward the removal or termination of the same, the Developer shall have the right, through its agents and employees, to enter upon such Lot and to take such steps as may be necessary to extinguish violation and the cost thereof shall be a binding, personal obligation of such owner as well as a lien (enforceable in the same manner as a mortgage) upon the Lot in question. The lien provided in this covenant shall not be valid as against a bona fide purchaser (or bona fide mortgagee) of the Lot in question unless a suit to enforce said lien shall have been filed in a court of record in Shelby County prior to the recordation among the Land Records of Shelby County of the deed (or mortgage) conveying the Lot in question to such purchaser (or subjecting the same to such mortgage).

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7. CERTIFICATE OF COMPLIANCE: Upon completion of the construction or alteration of any structure or improvement in accordance with plans and specifications approved by the Committee, the Committee shall, upon written request of the owner thereof, issue a certificate of compliance in form suitable for recordation, identifying such structure or improvement and the Lot on which such structure or improvement is placed, and stating the plans and specifications, the location of such structure or improvement and the use or uses to be conducted thereon have been approved and that such structure and improvement complies with the requirements of the Committee.

Preparation and recording of such certificate shall be at the expense of such owner. Any certificate of compliance issued in accordance with the provisions of this Section 7 shall be prima facie evidence of the facts therein stated, and as to any purchaser or encumbrancer in good faith and for value, or as to any title insurer, such certificate shall be conclusive evidence that all structures or improvements on the Lot, and the use or uses described therein comply with all requirements of this Article III, and with all other requirements of this Declaration as to which the Committee exercises any discretionary or interpretive powers.

8. INSPECTION RIGHTS: Any agent of Developer or the Committee may at any reasonable time or times enter upon

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and inspect any Lot, and any improvements thereon for the purpose of ascertaining whether the maintenance of such Lot and the maintenance, construction, or alteration of structures and improvements thereon are in compliance with the provisions hereof; and neither the Developer nor the Committee nor any such agent shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

8. WAIVER OF LIABILITY: Neither the Committee nor any architect nor agent thereof, nor Developer, nor any partner, agent or employee of any of the foregoing, shall be responsible in any way for any failure of structures or improvements to comply with requirements of this Declaration, although a certificate of compliance has been issued, any defects in any plans and 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 and all persons submitting any such plans and specifications, and all persons relying thereon, agree not to sue or claim against the entities and persons referred to in this Section 9 and further agree to and do hereby release said entities and persons for any and every such cause.

ARTICLE IV

USE OF THE PROPERTY

1. THIS SECTION INTENTIONALLY DELETED
2. SIGNS: No sign of any kind shall be displayed to the public view except signs of not more than five (5) square feet to advertise a home for sale or builder's signs during construction and prior to the sale of the home by the builder.
3. ANIMALS: No animals, birds, livestock or insects shall be kept or maintained on any of the Property except that each owner of a Lot may maintain not more than two dogs and two cats as domestic pets are confined to the Lot of the owner of such pets.
4. GARBAGE AND REFUSE: No lumber, metals or bulk materials shall be kept, stored, or allowed to accumulate on any Lot within the Property, except building materials during the course of construction of any approved

structure or improvement. No refuse or trash shall be kept, stored or allowed to accumulate except between scheduled pick-ups and in accordance with the provisions hereof. If trash or other refuse is to be disposed of by being picked up and carried away on a regular and recurring basis, such trash or refuse may be placed in sanitary containers. Such sanitary containers may be placed in the open, on any day that a pick-up is to be made, at such place on the Lot as to provide access to the persons making such pick-up. All other times such containers shall be stored in such a manner so that they cannot be seen from adjacent surrounding Property.

5. OUTSIDE BURNING: Burning of trash, refuse or other materials on any Lot within the Property shall be prohibited.

6. PIPES: No water pipe, gas pipe, sewer pipe or drainage pipe shall be installed or maintained above the surface of the ground of any Lot within the Property, except for hoses and movable irrigation pipes.

7. OIL AND MINING: No Lot within the Property shall be used for the purpose of boring, mining, quarrying, exploring for or removing oil or other hydrocarbons, minerals, gravel or earth.

8. NUISANCE: No obnoxious, offensive or illegal activity shall be carried on upon any Lot within the Property nor shall anything be done on any Lot within the Property

which may become an annoyance or nuisance to other Lots within the Property.

9. STORAGE OF BOATS AND TRAILERS: Storage of boats, boat trailers, house trailers, campers, recreational vehicles or similar equipment or vehicles in the open on any Lot shall be prohibited.

10. AIR CONDITIONER UNITS: No window or thru-the-wall A/C units will be permitted.

11. CLOTHES LINES: No clothes lines of any kind will be permitted.

ARTICLE V

LAKE

1. PRIVATE USE:

The lake as shown on attached Exhibit "A" (the "Lake") shall be used by and benefit Lots 3, 4, 5 of Berryhill-Second Sector and Lot 6 of Berryhill-First Sector ("the Lake Lots"). No owner of a Lake Lot shall allow guests or invitees the use of the Lake unless such Lake Lot owner is present at the time of such use.

2. OWNERSHIP:

It is expressly understood and by accepting deed or Mortgage to a Lake Lot, each such Lake Lot owner or Mortgagee recognizes that the ownership of the Lake bed shall be as depicted on Exhibit "A", however, the owners of the Lake Lots shall have the unrestricted use of the entire Lake for fishing.

3. RESTRICTIONS:

(a) No structures of any sort shall be constructed extending into the water on any Lake Lot. This restriction includes piers or boat houses of any sort.

(b) No boats shall be used on the Lake.

(c) No owner of a Lake Lot shall make such use of the water in the Lake so as to cause the pool of the Lake to diminish below its natural state.

4. MAINTENANCE:

Maintenance and care of the Lake shall be conducted through the owners of the lake and shall be determined by an affirmative vote of 3/4 of the owners of the Lake Lots unless such repairs and maintenance are required by any governmental authority having jurisdiction, in which case such repairs or maintenance required by such authority shall be binding on all of the Lake Lot owners. Any Lake Lot owner may originate a written petition for Lake repairs or maintenance. Such petition shall be sufficient if given to the owners of the Lake Lots at the addresses listed with the tax assessor of Shelby County, Alabama. Failure by any Lake Lot owner to respond to any such notice within thirty (30) days of the date of such notice shall be conclusively deemed to bind the non-responding Lake Lot owner to the proposed repairs or maintenance and shall be deemed an affirmative vote for such proposed repairs or maintenance. Article VI, Paragraph 12, shall

apply to Lake maintenance and repairs, notwithstanding the earlier termination of these covenants.

ARTICLE VI

GENERAL

1. OBLIGATION TO BUILDER:

(a) Each owner of an unimproved Lot shall commence construction of a residential dwelling house in accordance with the requirements herein set forth on or before the expiration of two years from the date of conveyance of such Lot to the owner, and shall complete the construction on such residential dwelling house on or before the expiration of one year from the commencement of construction, but in no event later than three years from date of conveyance of said Lot.

(b) In the event a residential dwelling house on any Lot within the Property is damaged or destroyed in whole or in part, the owner shall be obligated to repair or replace said structure within one year from date of such damage or destruction and such repair and replacement of said structure shall be in accordance with the Covenants and Restrictions set forth in this Declaration. Further, all debris resulting from such damage or destruction must be removed and the Lot restored to a sightly condition with reasonable promptness, but not later than ninety (90) days after such damage or destruction.

2. RESTRICTIONS ON ALIENATION OF PROPERTY:

(a) The owner of a Lot shall have the right to sell, mortgage, hypothecate, subject to any security device transfer, assign, lease, or otherwise dispose of all or a portion of his interest in said Lot subject to the Covenants and Restrictions herein set forth, including the purchase option of Developer set forth in Section 3 of this Article VI.

3. INTENTIONALLY DELETED.

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CONTINUED FROM PG. 18 OF 19
INTENTIONALLY DELETED

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4. GRANTER'S ACCEPTANCE: The Grantee of any Lot subject to the coverage of this Declaration, by acceptance of the deed or other instrument conveying an interest in or title to, or the execution of a contract for the purchase 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 herein contained.

5. INDEMNITY FOR DAMAGES: Each and every Lot owner and future Lot owner, in accepting a deed or contract for any Lot subject to this Declaration, agrees to indemnify Developer for any damage caused by such owner, or 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.

6. SEVERABILITY: Every one of the provisions and restrictions is hereby declared to be independent of, and severable from the rest of the provisions and restrictions and of and from every other one of the provisions and restrictions and of and from every combination of the

provisions and restrictions. Invalidation by any court of any provisions or restrictions in this Declaration shall in no way affect any of the other provisions or restrictions which shall remain in full force and effect.

7. RIGHT OF DEVELOPER TO MODIFY RESTRICTIONS WITH RESPECT TO UNSOLD LOTS: With respect to any unsold Lot, Developer may include in any contract or deed hereinafter made or entered into such modifications and/or additions to this Declaration as Developer at his discretion desires.

8. CAPTIONS: The captions preceding the various paragraphs and subparagraphs in this Declaration are for the convenience of reference only, and none of them shall be used as an aid to the construction of any provision of this Declaration. 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.

9. EFFECTS OF VIOLATION ON MORTGAGE LIEN: No violation of any of this Declaration shall defeat or render invalid the lien of any mortgage made in good faith and for value upon any portion of the Property; provided, however, that any mortgagee in actual possession, or any purchaser at any mortgagees' or foreclosure sale shall be bound by and subject to this Declaration as fully as any other owner of any portion of the Property.

10. NO REVERTER: No restriction herein is intended to be,

or shall be construed as a condition subsequent or as creating a possibility of reverter.

11. DURATION AND AMENDMENT: The restrictions contained in this Declaration shall run with and bind the Property, shall inure to the benefit of and shall be enforceable by the Developer, the Architectural Committee, and the owner of the Lot included in the Property, their respective legal representatives, heirs, successors and assigns until the 31st day of December in the year 2010, after which time said restrictions shall be automatically extended for successive periods of ten (10) years, with the exception of the rights of the Developer as contained in Article VI, paragraph 7. This Declaration may not be amended in any respect except by the execution of an instrument signed by not less than 51% of the Lot owners, which instrument shall be filed for recording among the Land Records of Shelby County, Alabama, or in such other place of recording as may be appropriate at the time of the execution of such instrument. After December 31, 2020, this Declaration may be amended and/or terminated in its entirety by an instrument signed by not less than 51% of the Lot owners which instrument shall be filed for recording among the Land Records of Shelby County, Alabama, or in such other place of recording as may be appropriate at the time of the execution of such instrument.

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12. **ENFORCEMENT:** In the event of a violation or breach of any of these restrictions or any amendments thereto by any owner of a Lot, or employee, agent, or lessee of such owner, the owner(s) of Lot(s), Developer, their successors and assigns, or any 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 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 initiate an available remedy set forth herein shall be held to be a waiver of this party or an estoppel of this party or of any other party or assert any right available to him upon the recurrence of continuation of said violation or the occurrence of a different violation. Damages shall not be deemed adequate compensation for any breach or violation of any provision hereof, but any person or entity entitled to enforce any provision hereof shall be entitled specifically to relief by way of injunction as well as any other available relief either at law or in equity.

Any party to a proceeding who succeeds in enforcing a restriction or enjoining the violation or a restriction against a Lot owner may be awarded a reasonable attorney's

13. NO WAIVER: The failure of any party entitled to enforce any of these restrictions herein contained shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to such a violation or breach occurring prior to subsequent thereto; provided, however, that approval of plans pursuant to Article III shall be binding on any and all parties as a conclusive determination that such plans are in conformity with these restrictions.

IN WITNESS WHEREOF, the undersigned as the owner of the Property has caused this Declaration to be executed as the

30th day of May, 1991

GOGGANS DEVELOPMENT CO., INC.

BY: Randall H. Goggans
Randall H. Goggans
Its President

STATE OF ALABAMA)
Jefferson COUNTY)

I, James F. Doremouth, a Notary Public in and for said County, in said State, hereby certify that Randall H. Goggans, as President of Goggans Development Co., Inc. 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 the instrument he executed the same voluntarily and as the act of the corporation with full authority on the day the same bears date. Given under my hand and official seal, this 30 day of MAY, 1991

3-1-94
My commission expires

[Signature]
Notary Public

The undersigned as President of Builders Group, Inc.
by the execution hereof, hereby binds all Lots
acquired by the said Builders Group, Inc. within the
Property to these covenants.

BUILDERS GROUP, INC.

BY: [Signature]

ITS President PRESIDENT

STATE OF ALABAMA)
[Signature] COUNTY)

I, JAMES F. BURMOUTH, a Notary Public in and for
said County, in said State, hereby certify that Tommy
Davis, as President of Builders Group, Inc. whose name
is signed to the foregoing instrument, and who being
informed of the contents of the instrument he executed
the same voluntarily and as the act of the corporation
with full authority on the day the same bears date. Given
under my hand and official seal, this 30 day
of MAY,
1991.

3-1-94
My Commission Expires [Signature] Notary Public

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

91 JUN 10 AM 11:45

[Signature]
JUDGE OF PROBATE

1. Title Tax	_____
2. Ad Val. Tax	_____
3. Recording Fee	_____
4. Notary Fee	_____
5. Notary Seal	_____
6. Unrecorded Fee	_____
Total	<u>266.50</u>

