

**AMENDED AND RESTATED
PROTECTIVE COVENANTS
OF
SHOAL CREEK**

THIS DECLARATION, made on this 31st day of October, 1991, by Thompson Realty Co., Inc., an Alabama corporation (hereinafter referred to as "Declarant") and Shoal Creek Association, Inc., an Alabama nonprofit corporation (hereinafter referred to as "Association");

W I T N E S S E T H:

WHEREAS, Declarant at Real Volume 19, Page 861, in the Office of the Judge of Probate of Shelby County, Alabama, recorded a certain Declaration of Protective Covenants to provide for the maintenance, preservation and architectural control of the lots and common areas within Shoal Creek Subdivision, as shown on that certain map or plat thereof recorded in Map Book 6, Page 150, in the aforesaid Office;

WHEREAS, Declarant and Association wish to amend and restate said Declaration of Protective Covenants in certain respects;

NOW, THEREFORE, Declarant and Association hereby declare that all of the aforesaid lots and common areas within Shoal Creek Subdivision shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the Properties and be binding on all parties having any right, title or interest in the Properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I
DEFINITIONS**

Section 1. "Architectural Committee" shall mean the committee created pursuant to ARTICLE VI hereof.

Section 2. "Architectural Committee Rules" shall mean the rules, if any, adopted by the Architectural Committee.

Section 3. "Articles" shall mean the Articles of Incorporation of the Association, as said Articles may be amended from time to time.

SHOAL CREEK ASSN.
103 CAROUSTIE
SHOAL CREEK, AL 36242

Section 4. "Association" shall mean and refer to Shoal Creek Association, Inc., an Alabama nonprofit corporation, its successors and assigns.

Section 5. "Board" shall mean the Board of Directors of the Association.

Section 6. "Bylaws" shall mean the Bylaws of the Association, as such Bylaws may be amended from time to time.

Section 7. "Common Area" shall mean all real property to be owned by the Association for the common use and enjoyment of the Owners, as set forth in the Subdivision Map.

Section 8. "Club" shall mean Shoal Creek, a non-profit corporation organized under the laws of the State of Alabama.

Section 9. "Club Property" shall mean all real property to be owned by the Club set forth on the Subdivision Map.

Section 10. "Declarant" shall mean Thompson Realty Co., Inc., an Alabama corporation.

Section 11. "Declaration" shall mean the covenants conditions and restrictions herein set forth in this entire document, as same may from time to time be amended.

Section 12. "Improvement" shall mean the buildings garages, carports roads, driveways, parking areas, fences, walls, docks, hedges, plantings, planted trees and shrubs, and all other structures or landscaping improvements of every type and kind.

Section 13. "Lot" shall mean any parcel of real property designated as a Lot on the recorded Subdivision Map and any parcel of real property which becomes a Cottage Lot upon subdivision of a Lot under the provisions of Section 3 of Article IV hereof. A Lot shall be deemed "Developed" when all offsite streets and utilities have been completely installed. A Lot shall be deemed "Improved" when a Single Family Residence has been completely constructed thereon. All other Lots shall be deemed "Undeveloped Lots."

Section 14. "Member" shall mean any person who is a member of the Association. Every Owner shall be a Member of the Association.

Section 15. "Owner" shall mean and refer to the Club and the record owner, whether one or more persona or entities, of equitable or beneficial title (or legal title if same has merged) of any Lot. The foregoing does not include persons or entities who hold an interest in any Lot merely as security for the performance of an obligation. For the purposes of ARTICLE IV only, unless the context otherwise requires "Owner" shall also include the family, invitees, licensees, and lessees of any Owner, together with any

other person or parties holding any possessory interest granted by such Owner in any Lot.

Section 16. "Properties" shall mean and refer to that certain real property hereinbefore referred to and described in the Subdivision Map, and such additions thereto as may hereafter be brought under the Declaration.

Section 17. "Purchaser" shall mean any person who acquires any Lot.

Section 18. "Single Family" shall mean a group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three persons not all so related, who maintain a common household in a dwelling.

Section 19. "Single Family Residence" shall mean a dwelling constructed in accordance with the restrictions and conditions set forth in ARTICLE IV hereof.

Section 20. "Single Family Residential Use" shall mean the occupation or use of a Single Family Residence in conformity with this Declaration.

Section 21. "Subdivision Map" shall mean the recorded map or plat covering any or all of the property referred to in this Declaration, and any amendments or supplements thereto, as recorded in Book 19, Page 861, in the Probate Court of Shelby County, Alabama.

Section 22. "Visible From Neighboring Property" shall mean, with respect to any given object, that such object or any part thereof is or would be visible to a person six feet tall, standing on any part of such neighboring property at an elevation no greater than the elevation of the base of the object being viewed.

Section 23. "Greenway Easement" shall mean the easements in favor of the Association for the benefit of Members as shown on the Subdivision Map.

Section 24. "Executive Suites Building" shall mean a structure constructed in accordance with the restrictions and conditions set forth in Article IV hereof.

Section 25. "Cottage Lot" shall mean and refer to a lot identified in Article IV, Section 3.

Section 26. "Cottage" shall mean a free-standing, single family residence constructed in accordance with the restrictions and conditions set forth in Article IV hereof.

**ARTICLE II
PROPERTY RIGHTS**

Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to the property acquired by the Owner, subject to the right of the Association to dedicate all or any part of the Common Area to any political entity or subdivision. No such dedication or transfer shall be effective unless an instrument reflecting the agreement of Members representing two-thirds (2/3) of the votes agreeing to such dedication or transfer has been recorded.

**ARTICLE III
PROPERTY SUBJECT TO
RESTRICTIONS**

Section 1. GENERAL DECLARATION. The Declarant intends to sell and convey the Lots to Purchasers subject to this Declaration and any subsequent amendment or supplement thereto. Declarant hereby declares that all of the properties are and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred in whole or in part, subject to this Declaration, as amended or supplemented from time to time. This Declaration is declared and agreed to be in furtherance of a general plan for the subdivision and improvement of the Properties and is established for the purpose of enhancing and protecting the value, desirability and attractiveness thereof. All of the provisions of this Declaration shall run with the Properties for all purposes and shall be binding upon and inure to the benefit of Declarant, the Association, the Club, all Owners and their heirs, successors and assigns.

Section 2. UNDEVELOPED TRACT. Included in the properties is a tract (designated as Undeveloped Acreage Tract on the Subdivision Map and herein referred to as the "Tract") which is located generally southeast of the Lots referred to in Section 1 of Article IV hereof and which is not planned for immediate subdivision and development, but which may be subdivided and developed at a later date. The Tract may be subdivided and developed by the Declarant without the consent of Members. Upon recordation of any subsequent plat, the common areas and easements within such property may be conveyed to the Association to be held and administered in the same manner as herein provided. Declarant will, at the time of the development of the Tract or any part thereof, record additional declarations which will incorporate this Declaration by reference and will supplement or modify this Declaration with such additional covenants, conditions and restrictions as may be appropriate for that property, provided that such additional covenants conditions and restrictions shall be consistent with those contained herein, and no use shall be made of the Tract which will adversely affect

any other portion of the Properties. The Tract may be used by any Owner for hiking and horseback riding, provided that the Declarant may withdraw the right to use any part or all of the Tract for such purposes at any time either by giving written notice to each Owner or by recording a supplement or modification of this Declaration.

**ARTICLE IV
LAND USE CLASSIFICATIONS,
PERMITTED
USES AND RESTRICTIONS**

Section 1. Permitted Uses and Restrictions. Subject to the provisions of Sections 2, 3, 4, 5, 6, 7, 8 and 9 of this Article, the permitted uses, easements, and restrictions for the Properties shall be as follows:

A. SINGLE FAMILY RESIDENTIAL USE. All Lots except as hereinafter specifically designated in Subparagraph B of this Section shall be used, improved and devoted exclusively to Single Family Residential Use. No business activity of any kind whatsoever shall be conducted on any such property, except by written authorization of declarant and the board upon written application by the owner of the affected Lot(s). All buildings and structures erected on any Lot shall be of new construction and no building or structure shall be moved from any other location onto any Lot. No structure whatever, other than one private Single Family Residence, which may include a private garage for not more than four (4) cars, a guest house, pool, cabana, tennis court, and servants quarters, shall be erected, placed or permitted to remain on any Lot except as specifically provided in Subparagraph B of this Section, "Other Use," and Section 3 of this article, "Cottage Lots and Cottages." No building or structure for residential purposes shall be erected or maintained separate from the residence hereinabove referred to, except that a guest house or servants quarters may be so erected and maintained if the Architectural Committee in its absolute discretion shall approve the architectural and landscape plans for such structure. The architectural Committee shall be charged with the responsibility of ensuring that no improvement, whether in the nature of building or landscaping, shall be initiated unless the quality of such improvement is compatible with the neighborhood standards within the Properties. Thus, although no improvement is required under this Declaration to be a minimum size or quantity, the quality and attractiveness of every improvement must meet high neighborhood standards and the Architectural Committee is hereby granted broad discretion in judging the compatibility of proposed improvements for the neighborhood. No part of any dwelling shall be used for the lodging of paying guests.

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B. Other Use.

1. Executive Suites Buildings. Lots 161 and 162 may, at the sole discretion of the declarant, be used and improved for construction and operation of executive suites buildings not greater than three (3) stories in height, not more than eight (8) suites per building, and not more than two buildings on each lot, in addition to the uses permitted in section 1, subparagraph a of this article. All Executive Suites Buildings erected on the aforesaid lots shall be of new construction and no building or structure shall be moved from any other location onto any lot. The Architectural Committee shall be charged with the responsibility of ensuring that no improvement, whether in the nature of building or landscaping, shall be initiated unless the quality of such improvement is compatible with the neighborhood standards within the properties. The Architectural Committee is hereby granted broad discretion in judging the compatibility of proposed improvements for the neighborhood. Declarant may lease Executive Suites to members of the Association, the club or to other persons deemed suitable by the declarant, for use by said members and persons as personal or business or professional offices. No sign or other marking bearing a trade or business name shall be erected on a lot or affixed to the exterior of an Executive Suites Building.

2. Landscape Nursery. Lots 2 and 3 may, at the sole discretion of the declarant, be used and improved for operation of a landscape nursery or "community garden," or both, for the planting and growth of trees, shrubbery, flowers and vegetables by the declarant, the club and members of the association, for the use and benefit of declarant, the club and members of the Association. The Architectural Committee is hereby granted broad discretion in judging the compatibility of proposed improvements, including any buildings, offices or maintenance areas to be utilized by declarant on said Lots.

3. Improvements and alterations on the Lots identified in this "Other Use" Subparagraph B shall be subject to the terms and conditions of Article IV, Section 1, Subparagraph E below. Furthermore, notwithstanding the uses allowed in Section 1, Subparagraph B of this Article IV, Declarant may nevertheless sell and convey a lot identified therein to a purchaser for use as a single family residence, subject to the terms and conditions applicable thereto. Purchasers taking title in fee to such lots shall use, improve and devote the Lots exclusively to single family residential use and, for each such Lot, the "other use" development rights accorded the declarant in Subparagraph B hereof shall terminate upon passage of title to the purchaser.

C. ANIMALS. No animals, horses, birds, fowl, poultry, or livestock, other than a reasonable number of generally recognized house or yard pets, shall be maintained on any Lot and then only if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. No animal, horse, bird, fowl, poultry, or livestock shall be allowed to make an unreasonable amount of noise, or to become a nuisance. No structure for the care, housing or confinement of any animal, bird, fowl, poultry, or livestock shall be maintained on any Lot so as to be Visible From Neighboring Property. Upon the written request of any Owner, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this paragraph, a particular animal, bird, fowl, poultry, or livestock is a generally recognized house or yard pet, or a nuisance, or whether the number of animals or birds on any such property is reasonable. Any decision rendered by the Board shall be enforceable as other restrictions contained herein. The provisions hereof are subject to the provisions of Section 7 of Article IV hereof.

D. ANTENNAS. No antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors within the Properties, whether attached to a building or structure or otherwise, unless approved by the Architectural Committee, provided that such approval shall not be withheld if an antenna or other device is reasonably necessary for clear television or radio reception. The Architectural Committee may impose reasonable restrictions with respect to antennas in order to ensure aesthetic compatibility with the neighborhood.

E. UTILITY SERVICE. Unless approved in writing by the Architectural Committee or permitted pursuant to easement granted prior to recordation of the Subdivision Map, no lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any property within the Properties unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Architectural Committee. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Architectural Committee. An easement for all utilities is granted within all road rights-of-way as shown on the Subdivision Map. Certain easements for electrical transmission (and related facilities) are shown on the Subdivision Map and/or have been conveyed by separate instrument by the Declarant. In addition to such power easements, an easement ten feet in width for electrical power cables and transformer boxes is granted along all Lot boundaries, five feet on either side of each such boundary. The following special covenants shall apply with respect to electrical power use:

1. The Owners of Lots within the Properties will not erect or grant to any person, firm or corporation the right, license or privilege to erect or use or permit the use of overhead wires, poles, or overhead facilities of any kind for electrical or telephone service on said real estate (except such poles and overhead facilities as may be required at those places where distribution facilities enter and leave the Properties). Nothing herein shall be construed to prohibit overhead street lighting, or ornamental yard lighting, where serviced by underground wires or cables.

2. In order to beautify the Properties for the benefit of all Lot Owners and permit Alabama Power Company to install underground electric service to each house within the Properties for the mutual benefit of all Lot Owners therein, no Owner of any Lot within the Properties will commence construction of any house on any said Lot until such Owner (1) notifies Alabama Power Company that such construction is proposed, (2) grants in writing to Alabama Power Company such rights and easements as Alabama Power Company requests in connection with its construction, operation, maintenance and removal of underground service lateral on each Lot, and (3) otherwise complies with the Rules and Regulations for Underground Residential Distribution on file with and approved by the Alabama Public Service Commission, provided that construction initiated prior to the filing of the Subdivision Map shall not be deemed to violate the prior notice provision.

3. Alabama Power Company, its successors and assigns, will retain title to the underground service lateral and outdoor metering trough or housepower box (exclusive of circuit breakers) serving each said house, and said service entrance facilities provided by Alabama Power Company will not in any way be considered a fixture or fixtures and thereby a part of said real estate, but will remain personal property belonging to Alabama Power Company, its successors and assigns, and will be subject to removal by Alabama Power Company, its successors and assigns, in accordance with applicable Rules and Regulations filed with and approved by the Alabama Public Service Commission.

4. These covenants and restrictions touch and concern and benefit the land and shall run with the land and shall be binding on Alabama Power Company, the Owners, their respective heirs, successors and assigns. Invalidation of any one of the foregoing covenants and restrictions shall in no way affect any other provision contained herein.

F. IMPROVEMENTS AND ALTERATIONS.

1. No improvements, alterations, repairs, excavation or other work which in any way alters the exterior appearance

of any property within the Properties or the improvements located thereon from its natural or improved state existing on the date such property was first conveyed in fee by Declarant to a Purchaser shall be made or done without the prior approval of the Architectural Committee, except as otherwise expressly provided in this Declaration. Prior to making any improvement to any Lot, the Owner shall submit to the Architectural Committee the plans and specifications of the dwelling and landscape of the Lot. No building, fence, wall, screen, residence or other structure shall be commenced, erected, maintained, improved, altered, made or done without the prior written approval of the Architectural Committee or any committee established by the Architectural Committee for the purpose. Pursuant to its rulemaking power, the Architectural Committee shall establish reasonable procedures for the preparation, submission and determination of applications for any improvement or alteration. The Architectural Committee shall have the right to refuse to approve any plans or specifications or landscape plans, which are not reasonably suitable or desirable, in its opinion, for aesthetic or other reasons, and in so passing upon such plans, specifications and landscape plans, and without any limitation of the foregoing, it shall have the right to take into consideration the suitability of the proposed building or other structure, and of the materials of which it is to be built, the site upon which it is proposed to erect the same, the harmony thereof with the surroundings and the effect of the building or other structure as planned, on the outlook from the adjacent or neighboring property. All subsequent additions to or changes or alterations in any building, fence, wall, or other structure, shall be subject to the prior approval of the Architectural Committee. Unless otherwise approved in writing by the Architectural Committee, no building, fence, wall or other structure shall be erected or located nearer than: (1) 100 feet to any Lot boundary which abuts a road right-of-way; (2) 75 feet to any Lot boundary which abuts Club property; (3) 50 feet to any Lot boundary which abuts Common Area; or (4) 50 feet to any Lot boundary which abuts an adjacent Lot. No changes or deviations in or from such plans and specifications once approved shall be made without the prior written approval of the Architectural Committee. All decisions of the Architectural Committee shall be final unless overridden by a vote of two-thirds of the members of the Board, and no Owner or other parties shall have recourse against the Architectural Committee or the Board for its refusal to approve any such plans and specifications or plot plan. In the event that the Architectural Committee shall fail either to approve or disapprove any plans or specifications within 90 days after submission to it, then such plans or specifications will be deemed to have been approved and the Owner may proceed with his proposed improvements, alterations, repairs, excavation or other work.

2. All improvements and alterations must be completed within 24 months after construction or alteration is begun, unless the time for such completion is extended in writing by the Architectural Committee upon written application by the Lot owner. Unless so extended, the owner of any Lot upon which improvements and alterations have been begun and remain incomplete 24 months after their commencement shall pay monthly to the Association the sum of \$100 for each day until the improvement or alteration is completed. Should any alteration or improvement remain incomplete 30 months after its commencement, Declarant and the Association, or either of them, shall have the right to enter upon the Lot and, through the employment of contractors, or otherwise, cause the exterior of such improvement or alteration, including landscaping, to be completed for the Lot owner's account. The owner shall upon written demand reimburse Declarant or the Association for the cost of such completion. Declarant or the Association shall have a lien upon the lot to secure the payment of the cost of completion and may enforce such lien in the manner permitted the association under Paragraph B of Section 8 of the Article V of the Protective Covenants. The Lot owner's obligation to pay the sum of \$100 a day until completion shall terminate no later than 30 days after declarant or the Association undertakes such completion.

3. Any owner causing any improvements or alterations on his Lot to be made shall cause his contractor or other persons working on the Lot to maintain the construction site in as orderly condition free of rubbish or debris as is practicable consistent with the work being done, bearing in mind the objective of annoying or inconveniencing residents of other Lots as little as reasonably feasible. Should any trash, rubbish, debris, or construction trailers or shacks be permitted to remain on any lot after completion, or suspension for more than 30 days, of any construction work, then the Association, Declarant, the Architectural Committee, or any of them, may request and require the owner to remove all or part of the same. Should the owner fail to do so within 10 days of such request, then the Association and Declarant, or either of them, may enter upon the lot and remove all or part of such trash, rubbish, debris, construction trailers or shacks and perform such additional work as may be necessary to improve the appearance of the Lot all without any liability of any kind to owner. Any costs incurred in effecting such removal shall be paid by owner within 30 days of written request that the owner do so, and if not so paid, shall be a charge and lien against the Lot collectible as set forth in Section 8 of Article V.

4. No wooden deck which can be seen during any time of the year from the golf course maintained by Shoal Creek shall be erected in connection with any house or other structure on any

Lot unless the Architectural Committee shall grant a variance therefor as authorized under Section 9 of Article IV of the Protective Covenants.

G. TEMPORARY OCCUPANCY. No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structure of any kind shall be used at any time for a residence within the Properties, either temporary or permanent. Temporary buildings or structures used during the construction of a dwelling on any such property shall be removed immediately after the completion of construction.

H. TRAILERS AND MOTOR VEHICLES. No mobile home, bus, motor home, truck larger than one (1) ton, trailer of any kind, truck camper, or permanent tent or similar structure shall be kept, placed (except during the course of making deliveries or for the purposes of loading or unloading), maintained, constructed, reconstructed or repaired, nor shall any motor vehicle be constructed, reconstructed or repaired, upon any property or street within the Properties in such a manner as will be visible from neighboring property; provided, however, that the provisions of this paragraph shall not apply to emergency vehicle repairs or temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any Improvement approved by the Architectural Committee. No vehicle of any kind shall be allowed to park overnight on any street within the Properties. No motorized vehicle of any kind may be operated in a manner which, in the opinion of the Architectural Committee, is dangerous, noisy, or which creates a nuisance, and no two-three-or-four-wheel engine powered recreational all terrain vehicle (ATV) shall be operated at any time upon an unpaved portion of the Properties without prior notice to and approval by the Declarant or Declarant's agent, or upon paved roads except for means of immediate ingress to and egress from the properties.

I. MAINTENANCE OF LAWNS AND PLANTINGS. Each Owner of a Lot within the Properties shall properly maintain his yard and keep his property free of trash, and other unsightly material; provided however, that such Owner shall not be responsible for maintenance of any area as to which Declarant or the Association has assumed the responsibility. The initial landscaping of any Lot shall be subject to approval by the Architectural Committee in the manner set forth in Paragraph E above. With respect to any Lot whose back or side boundary abuts any part of the Club Property (particularly, Lots 68, 77, 78, 95, 96, 111, 112, 123, 124, 146, 151 and 160), the Owner shall not undertake any landscaping program or remove any trees or shrubs from the portion of his Lot within 50 feet of such boundary, unless approved in writing by the Architectural Committee prior to any such action. No Owner shall remove trees or shrubs from, or otherwise alter, Greenway Easements, as described on the Subdivision Map, without the prior written consent of the Architectural Committee.

J. NUISANCES. No rubbish or debris of any kind shall be placed or permitted to accumulate upon the Properties and no odors shall be permitted to arise therefrom, so as to render any such property or any portion thereof unsanitary, unsightly, offensive, or detrimental to any other property in the vicinity thereof or to its occupants. No nuisance shall be permitted to exist or operate upon any such property so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any of the Properties. The provisions of this paragraph shall not prohibit use by an Owner of standby power-generation equipment used on a temporary basis, provided that the Owner makes every reasonable effort to muffle the noise of such equipment. The Architectural Committee in its sole discretion shall have the right to determine the existence of any such nuisance.

K. REPAIR OF BUILDINGS. No building or structure within the Properties shall be permitted to fall into disrepair, and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished.

L. TRASH CONTAINERS AND COLLECTION. No garbage or trash shall be placed or kept within the Properties except in covered containers of a type, size and style which are approved by the Architectural Committee. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make the same available for collection, and such containers shall be placed in an appropriate place for pickup only on scheduled pickup days and shall be removed to a nonvisible storage area reasonably soon after such pickup. All rubbish, trash, or garbage shall be removed from the Lots and shall not be allowed to accumulate thereon. No incinerators for burning trash or garbage shall be kept or maintained on any Lot, nor shall garbage or trash be permitted to be buried on any Lot at any time.

M. CLOTHES DRYING FACILITIES. Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained within the Properties unless they are: (1) erected, placed and maintained exclusively within a fixed service yard, or otherwise concealed; (2) not Visible From Neighboring Property; and (3) approved by the Architectural Committee.

N. ENCROACHMENTS. No tree, shrub, or planting of any kind on any property devoted to Single Family Residential Use within the Properties shall be allowed to overhang or otherwise to encroach upon any street or passageway from ground level to a height of twelve (12) feet, without the prior written approval of the Architectural Committee.

O. RIGHT OF WAY. During reasonable hours and in appropriate circumstances, any member of the Architectural Committee or the Board, or any authorized representative of any of them, shall have the right to enter upon and inspect the Properties and the improvements thereon, for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with, and such persons shall not be deemed guilty of trespass by reason of such entry.

P. MINERAL EXPLORATION. No property within the Properties shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind.

Q. MACHINERY AND EQUIPMENT. No machinery or equipment of any kind shall be placed, operated or maintained upon any Lot except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of a residence, appurtenant structures, or other improvements.

R. DISEASES AND INSECTS. No Owner shall permit any thing or condition to exist upon the Properties which shall induce, breed or harbor infectious plant diseases or noxious insects.

S. RESTRICTION ON FURTHER SUBDIVISION. Except as provided in Section 3 of this Article IV, no Lot within the Properties shall be further subdivided or separated into smaller lots or parcels by any Owner, and no portion less than all of any such Lot, nor any easement or other interest therein, shall be conveyed or transferred by any Owner without the prior written approval of the Board.

T. SIGNS. No signs, or billboards whatsoever (including, but not limited to, commercial, "for sale," political and similar signs) which are Visible From Neighboring Property shall be erected or maintained on any Lot, except:

- (1) Such signs as may be required by legal proceedings;
- (2) Reasonable residential identification signs;

(3) During the time of construction of any building or other improvement, one job-identification sign not larger than eighteen by twenty-four inches in height and width and having a face area not larger than three square feet; and

(4) Such signs, the nature, number, and location of which have been approved in advance by the Architectural Committee.

U. DECLARANT'S EXEMPTION. Nothing contained in this Declaration shall be construed to prevent the erection or

maintenance by Declarant or its duly authorized agents, of structures, improvements or signs necessary or convenient to the development, sale, operation and other disposition of the Lots.

v. Swimming pool or tennis court. Nothing herein contained shall prohibit the construction of a swimming pool or tennis court on any Lot, together with such appurtenances as may be reasonably necessary for the use and enjoyment thereof, subject to approval of the Architectural Committee in the manner prescribed for other improvements, except that no swimming pool or tennis court may hereafter be built, constructed, or located on any Lot which is contiguous to any property of Shoal Creek Club which is used for golf course purposes. Swimming pools heretofore constructed or now under construction shall not be affected by this amendment. Unless and to the extent otherwise determined by the Architectural Committee, no owner shall leave swimming pool or tennis court lights on after 11:00 o'clock p.m., provided that this provision shall not relate to in-water swimming pool lights or normal exterior home flood lighting.

W. RESALE OF LOTS. It is deemed to be desirable that all Owners be members of the Club, but no implication is intended that ownership of any improved or unimproved Lot is contingent upon, or entitles any Owner, to membership in the Club. An Owner who wishes to sell or otherwise dispose of his Lot, whether improved or unimproved, shall advise the Board and shall submit to the said Board, a written statement of the name and address of the prospective purchaser, donee or other transferee of the Lot and, if a sale is contemplated, a statement of the proposed purchase price and other proposed terms of sale; if a transfer other than a sale (for example, a gift) is contemplated, the Owner shall so advise the Board. If the proposed transaction is a sale, the Declarant shall have the first option to purchase the Lot (whether improved or not) at the proposed sale price and on the proposed sale terms. In the event that the Declarant does not exercise its option, then the Association shall have an option to purchase the Lot (whether improved or not) at the proposed sale price and on the proposed sale terms which option may be exercised as hereinafter provided if the Board within twenty (20) days of receipt of the owner's statement receives voluntary subscriptions from Association members in an amount equal to the proposed sale price. If the Owner proposes a transfer other than a sale, then the Declarant shall have a first option to purchase the Lot at an amount equal to its fair market value as determined by two independent real estate appraisers, one of whom shall be chosen by the Declarant and one of whom shall be chosen by the Owner. In the event that each of the appraisers arrives at a fair market value which is within \$10,000 of the other, then the fair market value shall be deemed to be the average of the two. In the event that the two appraisals are not within \$10,000 of each other, then the two appraisers shall choose a third appraiser who shall conclusively determine the fair market value of the Lot for this purpose. No person shall be qualified as

an appraiser hereunder who is not an MAI. If the Declarant does not exercise its first option to purchase in the event of a transfer other than a sale, then the Association shall have an option on the same terms and conditions as Declarant which option may be exercised as hereinafter provided if the Board within twenty (20) days of receipt of the owner's statement receives voluntary subscriptions from Association members in an amount equal to the fair market value as determined by the final appraisal. Within twenty (20) days of receipt of the Owner's statement, the Declarant or the Board shall deliver a written statement to the Owner stating whether it elects to purchase the Owner's Lot. If the Declarant or the Association does not exercise the right to purchase the Lot in accordance with the foregoing provisions, then the Owner may proceed to sell or otherwise transfer the Lot to the proposed purchaser or other transferee on the same terms as those set forth in the Owner's statement. If the Declarant or the Association elects to purchase the Owner's Lot, the closing of the sale shall take place within thirty (30) days after the date of the statement of election to purchase or, if an appraisal is required, within thirty (30) days after receipt of the final appraisal. The cost of all appraisals shall be shared equally by the Declarant or the Association and the Owner.

Section 2. Permitted Uses and Restrictions-Common Area. The permitted uses and restrictions for Common Area shall be as follows:

A. MAINTENANCE BY ASSOCIATION. The Association may, at any time, as to any Common Area conveyed, leased, or transferred to it, or otherwise placed under its jurisdiction, in the discretion of the Board, without any approval of the Owners being required:

(1) Reconstruct, repair or refinish any improvement or portion thereof upon any such area (to the extent that such work is not done by a governmental entity, if any, responsible for the maintenance and upkeep of such area), including all fences, walls or other enclosures which are constructed upon and around the perimeter of the Properties;

(2) Construct, reconstruct, repair, replace or refinish any road improvement or surface upon any portion of such area used as a road, street, walk, driveway, or parking area;

(3) Replace injured and diseased trees or other cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes; and

(4) Place and maintain upon any such area such signs as the Board may deem appropriate for the proper identification, use and regulation thereof;

(5) Do all such other acts which the Board deems necessary to preserve and protect the Properties and the beauty thereof, in accordance with the general purposes specified in Declaration.

The Board shall be the sole judge as to the appropriate maintenance of all grounds within the Common Area.

B. The Board shall have the right to provide services, the cost of which shall be paid out of the charges provided for in Article V, and adopt rules, regulations, procedures and policies with respect to:

- (1) garbage and trash collection and removal;
- (2) motor vehicle operation for security purposes;
- (3) parking of motor vehicles on streets or roads in Common areas;
- (4) maintenance and furnishing of guard or security guard services;
- (5) fire protection and fire prevention and extinguishment of fires;
- (6) the locking and securing of gates or points of access and the issuance and distribution of keys or other devices to operate locks or gates;
- (7) the stocking, fertilizing, and use of lakes or waterways in the Common Area (including without limitation the regulation of types and sizes of boats and motors, the allowance or prohibition of boat houses or docks, access to lakes and use of common area surrounding lakes) and no Owner (other than the Club) shall have riparian rights with respect to any stream or lake abutting any such Owners Lot; and
- (8) such other matters which involve use of Common Areas.

C. DAMAGE OR DESTRUCTION OF COMMON AREA BY OWNERS. In the event any Common Area or any of said fences or structures hereinabove mentioned are wrongfully damaged or destroyed by any Owner or any of his guests, tenants, licensees, agents or members of his family, such Owner does hereby authorize the Association to repair said damaged area, and the Association shall so repair said damaged area in a good workmanlike manner in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Association, in the discretion of the Association. The amount necessary for such repairs shall be paid by said Owner, upon

demand, to the Association and the Association may enforce collection of same in the same manner as provided elsewhere in this Declaration for collection and enforcement of assessments.

D. EASEMENTS TO ASSOCIATION. The Association shall have a right and permanent easement to enter upon any and all Lots for the purposes of such maintenance and repair hereinabove mentioned. Additionally, the Association shall have the right to govern the use of all fence easements and Greenway Easements, as set forth in the Subdivision Map; provided that no such use shall be adverse to the interests of abutting Owner; provided, further, that all rights to use of Greenway Easements for ingress and egress by Owners shall be limited to reasonable daylight hours.

Section 3. Cottage Lots and Cottages. Subject to the approval of the Shelby County Planning Commission, the Declarant may, in its discretion, subdivide Lots 2, 3, 7, 8, 9, 10, 16, 20, 32, 68, 87, 105, 147, 159, 160, and not more than three (3) Lots on the road to be designated Merion Crest but not constructed as of the time of the filing of this document, and construct, or permit to be constructed, on such subdivided Lot (herein called Cottage Lots) free-standing, single-family residences designed architecturally as a cluster; provided that no such Lot shall be subdivided into more than four Cottage Lots; provided, further, that no such Lot which is less than two acres in size shall be subdivided into more than three Cottage Lots. The plans and specifications for any such improvements shall be first approved in all respects by the Architectural Committee. No such plans and specifications shall be approved unless the proposed project will be consistent with high quality neighborhood standards and will not detract in any way from the quality of the neighborhood in the Properties. The provisions of this Declaration shall apply to all Cottage Lots to the same extent and with the same effect as to all Lots.

Section 4. Club Property. The Club Property shall be used exclusively as a country club, with such facilities as may be desirable in connection therewith, including a clubhouse, golf course, tennis courts, swimming pools, stables, equestrian trails, sports field, lakes, golf and tennis shops, grill and dining facilities, general store, and related and similar facilities, and shall not be used by the Club for different purposes which may adversely affect any other part of the Properties. The Club may lease to any third party any portion of the Club Property for purposes hereinabove stated.

Section 5. Lots 164 through 168. Lots 164 through 168 may be used by Declarant for equestrian facilities, trails, pasture, or related purposes. Should Lots 164 through 168 cease to be used as equestrian facilities, each of such Lots may be utilized as Cottage Lots as permitted for the Lots designated in Section 3 of this

Article, or for single family residential use as permitted under Section 1 A of this Article.

Section 6. Special Sanitation Covenants. At the time of the filing of this Declaration, the proposed sanitary disposal system has not been approved by the State and County Health Departments for some of the Lots. No such Lot shall be sold by the Declarant until such approval from the State and/or County Health Departments has been obtained. The Declarant may amend this Declaration to eliminate any Lot or rearrange the boundaries of any Lot or waive or change any covenants or conditions with respect to any Lot or Lots, rights-of-way, and greenway easements if any such action is required in order to obtain a certificate or letter of approval from the State and/or County Health Departments indicating approval of the sanitary disposal system of any Lot or Lots. In the event that this Declaration shall be amended as set forth herein, the Declarant shall cause such amendatory restrictive covenants to be filed of record.

Section 7. Special Equestrian Facilities. Notwithstanding any other restrictions contained in the Declaration, the Owners of Lots 169, 170, 171, and any other Lot which is contiguous to the Undeveloped Tract referred to in Section 2 of Article III may construct one small stable of not more than four stalls, and related equestrian facilities and maintain not more than four horses on such Lots, provided that the plans for such stable or stables and related facilities shall be approved in advance by the Architectural Committee in accordance with the procedures set forth herein; provided, further, that the Architectural Committee shall have complete discretion to determine the equestrian facilities and uses which shall be permissible on such Lots. Contiguous Lots which are deemed to be a single Lot under Section 8 below shall be treated as a single Lot for purposes of this Section 7.

Section 8. Contiguous Lots. In the event that an owner acquires contiguous Lots and wishes to treat such contiguous Lots as a single Lot for purposes of use and improvement, then such Owner shall be permitted to make improvements to such contiguous Lots as though such Lots constituted a single Lot and, after the consummation of such improvements, as approved in advance by the Architectural Committee, such Lots shall be deemed to be a single Lot for all purposes of the Declaration (other than for purposes of Article V hereof regarding payment of annual and special charges), including without limitation the prohibition against subdivision of a Lot and improvement restrictions.

Section 9. Variances and Amendments of Declaration. The restrictive covenants set forth herein may be waived by the Architectural Committee with respect to any given Lot for the benefit of such Lot, provided that no restrictive covenant shall be waived unless the Architectural Committee shall set forth in writing its unanimous determination that such waiver is consistent

with the objectives of this Declaration and is not detrimental to any Lot or to any property owned by the Club or the Association. Additionally, the Declaration may be amended by filing of record an agreement between the Declarant and all of the members of the Architectural Committee setting forth the amended portion of the Subdivision plat and the amendments to the restrictive covenants. For example, at the time of filing this Declaration, the Declarant has under consideration the construction of one or more lakes which are not on the Subdivision Map and, in order to accomplish such construction, it would be necessary to amend the Subdivision Map and this Declaration as well as make the necessary transfers of property involved. It is contemplated that such amendment would be permissible as hereinabove provided but only if no Owner (other than the Declarant) of a Lot contiguous to such lake site would be adversely affected by any such construction. The above provision for variances and amendments is intended to provide flexibility in the development of the Property consistent with best interests of the Owners. Notwithstanding the above provisions, Article V of this Declaration may only be amended in accordance with the provisions of Section 3 of Article VII hereof. In the event that, as a result of a proposed amendment to this Declaration under either this Section 9 or under Section 6, supra, some part of the Common Area will be eliminated, moved or otherwise altered, then the Association shall make such conveyances of Common Area to the Declarant or otherwise as may be necessary to permit the effectuation of such proposed amendment to this Declaration.

**ARTICLE V
COVENANTS FOR MAINTENANCE
CHARGES**

Section 1. Creation of the Lien and Personal Obligation of Charges. The Declarant, for each Lot owned by it hereby covenants, and the Club and each Owner by acceptance of a deed for any of the Properties is deemed to covenant and agree to pay to the Association: (1) annual charges, and (2) special charges as herein provided. The annual and special charges, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such charge is made. Each such charge, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the charge became due. The personal obligation for delinquent charges shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Charges. The Charges levied by the Association shall be used exclusively for the improvement and maintenance of the Common Area and for the provision of certain services or the procuring of certain services to the Club and Owners, including but not limited to security, garbage collection,

fire protection, and similar services which may be approved by Members representing two-thirds (2/3) of the votes or otherwise provided for under this Declaration or any amendment thereto. Notwithstanding the above restriction on use of funds for improvement and maintenance of the Common Area, the said funds may, to the extent of the excess of accumulated surplus over the total amount of regular charges for the preceding year, be used for capital expenditures to benefit the Common Area and fulfill the purposes of the Association.

Section 3. Special Charges for Capital Improvements. In addition to the annual charges, the Association may levy, in any given year, a special charge on each Lot applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such charge shall have the assent of two-thirds (2/3) of the votes of the Members (voting in person or by proxy) at a meeting duly called for this purpose; provided, further, that no such special charge shall during any year exceed an amount equal to five (5) times the prevailing annual Lot charge for each of the several Owner classifications unless such limitation be overridden by vote of 90% of the members voting in person or by proxy at an annual or special meeting, a quorum being present.

Section 4. Notice and Quorum for Any Action Authorized Under Section 3. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 shall be sent to all Members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be eighty percent (80%) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 5. Rate of charges. Both annual and special charges must be fixed at rates to apply separately to each of four (4) Owner classifications and may be collected on a monthly, quarterly, or annual basis, provided that, for purposes of this Section 5, the Club property shall be considered to be the equivalent of 150 Lots. The four (4) Owner classifications shall be: (1) Declarant; (2) Club; (3) Undeveloped Lot Owner; and (4) Improved Lot Owner. No Owner of a Lot, whether improved or unimproved, shall be entitled to a reduction because all or some of the services for which the assessment are made are not being utilized by the Owner of such Lot; provided, however, that the Lots owned by the Declarant shall

not bear any part of the maintenance cost after the Declarant has sold 200 lots.

Section 6. Date of Commencement of Annual Charges: Due Dates. The annual maintenance charges provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. The first annual charge shall be adjusted according to the number of months remaining in the calendar year. The Board shall fix the amount of the annual charge against each Lot at least thirty (30) days in advance of each annual charge period. Written notice of the annual charge shall be sent to every Owner subject thereto. The due dates shall be established by the Board. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the charges on a specified Lot have been paid.

Section 7. Limitation on charges. During the period from the date hereof through the date of the 1992 annual meeting of the Association, the monthly charges in any calendar year shall not exceed the limitation amounts. With respect to: (1) the undeveloped Lot Owner classification, the term "limitation amount" shall mean \$40 for each undeveloped Lot owned by such Owner; (2) the improved Lot Owner classification, \$115 for each improved Lot owned by such Owner; (3) the Club classification, \$50 for each of the 150 Lots assigned to the Club property; and (4) the Declarant classification, \$30 for each lot owned by the Declarant which abuts a constructed road right-of-way. Thereafter the limitation amount for one or more classifications may be adjusted upon recommendation of the Board and by the affirmative votes of two-thirds of the voting members present in person or by proxy at any annual or special meeting of the members and entitled to vote thereat, a quorum being present; but, in no event shall the limitation amount be increased more than 15% in one year unless such increase is effected pursuant to the provisions of Article VII, Section 3 below. Adjustment of the limitation on charges need not be recorded but shall be published by the Board following any action thereon taken at an annual or special meeting.

Section 8. Effect of Nonpayment of Charges: Remedies of the Association. Each Owner is and shall be deemed to covenant and agree to pay the Association the charges provided for herein, and agrees to the enforcement of the charges in the manner herein specified. In the event the Association employs an attorney or attorneys for collection of any charge, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, or for any other purpose in connection with the breach of this Declaration, each Owner agrees to pay reasonable attorney's fees and costs thereby incurred in addition to any other amounts due or any other relief or remedy obtained against said Owner. In the event of a default in payment of any such charge when due, in which case the charge

shall be deemed delinquent, and in addition to any other remedies herein or by law provided, the Association may enforce each such obligation in any manner provided by law or in equity, or without any limitation of the foregoing, by either or both of the following procedures:

A. ENFORCEMENT BY SUIT. The Board may cause a suit at law to be commenced and maintained in the name of the Association against an Owner to enforce each such charge obligation. Any judgment rendered in any such action shall include the amount of the delinquency, together with interest thereon at the maximum legal rate per annum from the date of delinquency, court costs, and reasonable attorney's fees in such amount as the Court may adjudge against the delinquent Owner.

B. ENFORCEMENT BY LIEN. There is hereby created a claim of lien, with power of sale, on every Lot and the Club Property to secure payment to the Association of any and all charges levied against any and all Owners, together with interest thereon at the maximum legal rate collection which may be paid or incurred by the Association in connection therewith, including reasonable attorney's fees. At any time within ninety days after the occurrence of any default in the payment of any such charge, the Association, or any authorized representative may, but shall not be required to, make a written demand for payment to the defaulting Owner, on behalf of the Association. Said demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand or claim of lien or a lien, but any number of defaults may be included within a single demand or claim of lien. If such delinquency is not paid within ten days after delivery of such demand, or, even without such a written demand being made, the Association may elect to file such a claim of lien on behalf of the Association against the property of the defaulting Owner. Such a claim of lien shall be executed and acknowledged by any officer of the Association, and shall contain substantially the following information:

1. The name of the delinquent Owner;
2. The legal description and street address of property against which claim of lien is made;
3. The total amount claimed to be due and owing for the amount of the delinquency, interest thereon, collection costs, and reasonable attorney's fees (with any proper offset allowed);
4. That the claim of lien is made by the Association pursuant to this Declaration; and
5. That a lien is claimed against said property in an amount equal to the amount stated.

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Upon recordation of a duly executed original or copy of such a claim of lien, and mailing a copy thereof to said Owner, the lien claimed therein shall immediately attach and become effective in favor of the Association as a lien upon the property against which such was levied. Such a lien shall have priority over all liens or claims created subsequent to the recordation of the claim of lien thereof, except only tax liens for real property taxes on any property, charges on any property in favor of any municipal or other governmental assessing unit, and the liens which are specifically described in Section 8 hereinafter. Any such lien may be foreclosed by appropriate action in court or in the manner provided by law for the foreclosure of a realty mortgage or trust deed as set forth by the laws of the State of Alabama, as the same may be changed or amended. The lien provided for herein shall be in favor of the Association and shall be for the benefit of all other Owners. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, mortgage, and convey any property. In the event such foreclosure is by action in court, reasonable attorney's fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law. Each Owner hereby expressly waives any objection to the enforcement and foreclosure of this lien in this manner and also hereby expressly waives the defense of the Statute of Limitations applicable to the bringing of any suit or action thereon.

Section 8. Subordination of the Lien to Mortgages. The lien of the charges provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any property shall not affect the charge lien. However, the sale or transfer of any property pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such charge as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such property from liability for any charges thereafter becoming due or from the lien thereof.

ARTICLE VI ARCHITECTURAL COMMITTEE

Section 1. Organization, Power of Appointment and Removal. There shall be an Architectural Committee organized as follows:

A. COMMITTEE COMPOSITION: The Architectural Committee shall consist of three regular members and two alternate members. None of such members shall be required to be an architect or to meet any other particular qualifications for membership. A member need not be a member of the Board or an officer of the Association.

B. ALTERNATE MEMBERS. In the event of the absence or disability of one or two regular members of said Committee, the remaining regular member or members, even though less than a

quorum, may designate either or both of the alternate members to act as substitutes for the absent or disabled regular member or members for the duration of such absence or disability.

C. MEMBERS. The following persons as of this date are the members of the Architectural Committee:

Office No. 1 Margaret Elliott, regular (expires 12-31-92)
Office No. 2 Hamilton Perkins, regular (expires 12-31-91)
Office No. 3 John Hudson, regular (expires 12-31-93)
Office No. 4 David Rozendale, alternate (expires 12-31-91)
Office No. 5 Hall W. Thompson, alternate (expires 12-31-91)

D. TERMS OF OFFICE. Unless the initial members of the Architectural Committee have resigned or been removed, their terms of office shall be for the periods of time indicated below, and until the appointment of their respective successors:

1. The term of Office No. 1 shall expire December 31, 1992;
2. The term of Office No. 2 shall expire December 31, 1991;
3. The term of Office No. 3 shall expire December 31, 1993;
4. The terms of Office No. 4 and Office No. 5 shall both expire December 31, 1991.

Thereafter the term of each Architectural Committee member appointed shall be for a period of three years and until the appointment of his successors. Any new member appointed to replace a member who has resigned or been removed shall serve such member's unexpired term. Members who have resigned, been removed or whose terms have expired may be reappointed.

E. APPOINTMENT AND REMOVAL. The right to appoint and remove all regular and alternate members of the Architectural Committee at any time, shall be and is hereby vested solely in the Board, provided, however, that no regular or alternate member may be removed from the Architectural Committee by the Board except by the vote or written consent of three-fifths (3/5) of all of the members of the Board. Exercise of the right of appointment and removal, as set forth herein, shall be evidenced by the recordation of a declaration identifying each new regular or alternate member appointed to the Committee and each regular or alternate member replaced or removed therefrom.

F. RESIGNATIONS. Any regular or alternate member of the Architectural Committee may at any time resign from the Committee

by giving written notice thereof to Declarant or to the Board, whichever then has the right to appoint Committee members.

G. VACANCIES. Vacancies on the Architectural Committee, however caused, shall be filled by the Declarant or the Board, whichever then has the power to appoint Committee members. A vacancy or vacancies on the Architectural Committee shall be deemed to exist in case of death, resignation or removal of any regular or alternate member.

Section 2. Duties. It shall be the duty of the Architectural Committee to consider and act upon any and all proposals or plans submitted to it pursuant to the terms hereof, to adopt Architectural Committee Rules, to perform other duties delegated to it by the Board, and to carry out all other duties imposed upon it by this Declaration.

Section 3. Meetings and Compensation. The Architectural Committee shall meet from time to time (not more often than once each month except in extraordinary circumstances) as necessary to perform its duties hereunder. Subject to the provisions of Paragraph B of Section 1 above, the vote or written consent of any two regular members, at a meeting or otherwise, shall constitute the act of the Committee unless the unanimous decision of the Committee is required by any other provision of this Declaration. The Committee shall keep and maintain a written record of all actions taken by it at such meetings or otherwise. No member of the Architectural Committee who is a member of the Association shall receive from the Association any compensation for services, provided that the Board may pay reasonable compensation to any member of the Architectural Committee who is not a Member of the Association. All regular or alternate Committee members shall be entitled to reimbursement from the Association for all reasonable expenses incurred by them in the performance of any Architectural Committee functions.

Section 4. Architectural Committee Rules. The Architectural Committee may, from time to time and in its sole and absolute discretion but shall not be required to, adopt, amend and repeal, by unanimous vote or written consent, rules and regulations, to be known as "Architectural Committee Rules."

Section 5. Waiver. The approval by the Architectural Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Architectural Committee, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specifications or matter subsequently submitted for approval.

Section 6. Liability. Neither the Architectural Committee, nor any member thereof, shall be liable to the Association, the

Club, any Owner, or to any other party, for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings, or specifications, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, (c) the development of any property, (d) the execution and filing of any estoppel certificate, whether or not the facts therein are correct, or (e) any other act, matter or thing in connection with the performance of the Member's duties. Without in any way limiting the generality of any of the foregoing provisions of this Section, the Architectural Committee, or any member thereof, may, but is not required to, consult with or hear the views of the Association, the Club or any Owner with respect to any plans, drawings, specifications, or any other proposal submitted to the Architectural Committee.

ARTICLE VII GENERAL PROVISIONS

Section 1. Enforcement. The Association, the Club, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provision which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Amended and Restated Declaration shall run with and bind the land and shall inure to the benefit of and be enforced by the Association, the Club, or the Owner of any Lot subject to this Declaration, their respective legal representative, heirs, successors and assigns, for a term of twenty (20) years from the date this Amended and Restated Declaration is recorded, after which time they should be automatically extended for successive periods of ten (10) years. In addition to the provisions for amendment set forth in Sections 7 and 9 of ARTICLE IV and Section 7 of Article V hereof, this Declaration may be amended during the first twenty (20) years by an instrument signed by the Club and not less than ninety percent (90%) of the Owners, and thereafter by an instrument signed by the Club and not less than seventy-five percent (75%) of the Owners. Any amendment must be recorded.

Section 4. Violations and Nuisance. Every act or omission whereby any provision of this Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or

abated, whether or not the relief sought is for negative or positive action, by Declarant, the Association, the Club, or any Owner or Owners of Lots. However, any other provision to the contrary notwithstanding, only Declarant, the Association, the Board, or the duly authorized agents of any of them may enforce by self-help any of the provisions of this Declaration. A violation of these restrictions and covenants, or any one of them, shall not affect the lien of any mortgage now of record, of which hereafter may be placed on record upon said Lots or any part thereof.

Section 5. Violation of Law. Any violation of any state, municipal, or local law, ordinance or regulation, pertaining to the ownership, occupation or use of the Properties is hereby declared to be a violation of this Declaration and subject to any and all of the enforcement procedures set forth herein.

Section 6. Remedies Cumulative. Each remedy provided by this Declaration is cumulative and not exclusive.

Section 7. Delivery of Notices and Documents. Any written notice or other documents relating to or required by this Declaration may be delivered either personally or by mail. If by mail, it shall be deemed to have been delivered twenty-four hours after a copy of same has been deposited in the United States mail, postage prepaid, addressed as follows: If to the Association, the Architectural Committee, or the Club, at 103 Carnoustie, Shoal Creek, AL 35242; if to an Owner, to the address of any Lot owned, in whole or in part, by him or to any other address last furnished by an Owner to the Association; and if to Declarant, at 103 Carnoustie, Shoal Creek, AL 35242; provided, however, that any such address may be changed at any time by the party concerned by recording a written notice of change of address and delivering a copy thereof to the Association. Each Owner of a Lot shall file the correct mailing address of such Owner with the Association, and shall promptly notify the Association in writing of any subsequent change of address.

Section 8. The Declaration. Deeds of conveyance of said property, or any part thereof, may contain the restrictions and covenants contained herein by reference to this document, but whether or not such reference is made in any or all of said deeds, by acceptance of a deed or by acquiring any ownership interest in any of the real property included within this Declaration, each person or entity, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the improvement and development of the real property covered thereby and hereby evidences his interest that all the restrictions, conditions, covenants, rules and regulations

contained herein shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future owners.

THOMPSON REALTY CO. INC.

By: *Hall W. Thompson*
Hall W. Thompson
Its: President

SHOAL CREEK ASSOCIATION, INC.

By: *Gerald W. Wiggins*
Gerald W. Wiggins
Its: President

ATTEST:

James N. Nolan

James N. Nolan
Secretary, Shoal Creek Association, Inc.

This 31st day of OCTOBER, 1991.

1. Deed Tax	_____
2. Mig. Tax	_____
3. Recording Fee	<u>70.00</u>
4. Indexing Fee	<u>3.00</u>
5. No Tax Fee	_____
6. Certified Fee	<u>1.00</u>
Total	<u>74.00</u>

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

91 OCT 31 PM 12:20

Thomas H. [illegible]
JUDGE OF PROBATE

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