

**CALLOWAY COVE
DECLARATION OF PROTECTIVE COVENANTS, RESTRICTIONS,
EASEMENTS AND LIENS**

This Declaration of Protective Covenants, Restrictions, Easements, Rights and Liens is made this 10 day of July, 2003, by the Active Building Contractors, Inc., the owner of the property described below (hereinafter referred to as Calloway Cove Townhomes).

WITNESSTH

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

LOTS 1 thru 32 and 50 thru 65, Calloway Cove, as recorded in Map Book 31, Page 67 in the Probate Office of Shelby County, Alabama.

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

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

NOW, THEREFORE, in order to enhance and protect the value, attractiveness and desirability of the Property and in furtherance of a general plan for the development, protection, maintenance, improvement, and sale of the Property, the Owner hereby declares that all of the Property shall be subject to the following covenants, restrictions, easements, rights, equitable servitude, liens and charges:

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

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

3. **DWELLING SIZE.** Every dwelling must contain not fewer than 1000 square feet of heated space.

4. **SET-BACK REQUIREMENTS.** Dwelling shall be constructed and placed on a Lot in conformance with the minimum building set-back requirements set forth in applicable municipal and county ordinances from the time to time effect or as may be indicated on the recorded plat.

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

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

7. **SIGNS & ANTENNAS.** No sign, poster, display, billboard or other advertising device of any kind shall be erected or displayed to the public view on any portion of the Property except one sign of not more than 6 square feet advertising a Lot for sale or rent may be place on the Lot and signs, regardless of size used by the Owner to advertise the Property during the period in which the Owner is constructing and/or selling townhouse units on the Property may be placed on the Property. No television or other antenna shall be placed or erected on the exterior of any residence. There shall be no satellite dishes allowed in excess of 18 inches.

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

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

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

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

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

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

13. APPLICATION TO OWNER. Notwithstanding any provisions herein to the contrary, nothing contained in this instrument shall prevent, hinder or limit the Owner in any manner what-so-ever in connection with the development of the Property and to construction and sale of townhouse units on the Property and any provision having such effect shall be null, void and unenforceable against the Owner.

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

15. PROHIBITION AGAINST CHANGING EXTERIOR OR LANDSCAPING. Each lot owner shall from time to time, paint (provided the same color is used) and otherwise maintain the exterior of his dwelling as needed. Such maintenance and painting shall be done in a manner harmonious with the remaining dwelling units and shall not be completed in such a manner, color or design so as to disrupt the harmonious blending of the original architectural plans of the dwelling units. Each lot owner shall be prohibited from making any changes at all in the landscaping, it being understood that all residences and landscaping are designed to blend harmoniously with each other. The following shall be located or maintained only at the rear of or behind a dwelling: wood piles, articles such as children's toys, jungle gyms, trampolines and other outdoor recreational equipment and appurtenances, statues, water fountains, bird baths, flagpoles, bird feeders, wood carvings, plaques, other home crafts or furniture. Barbecue grills and other outdoor cooking equipment and apparatus shall be located only at the rear of a dwelling and should not be visible from any public street. The Architectural Review Committee must approve freestanding playhouses and tree houses. No above ground swimming pools shall be located on any Parcel. Outside clothes lines and other facilities for drying or airing of clothes are prohibited. No clothing, rugs or other items shall be hung, placed or allowed to remain on any railing, fence or wall. No rocks, rock walls, fencing or other substance shall be placed on any Parcel as a front or side yard border to prevent vehicles from parking on or pedestrians from walking on any portion of a Parcel or to otherwise impede or limit access thereto. Seasonal or holiday decorations (Christmas trees, lights, pumpkins, Thanksgiving decorations) shall be removed promptly from any Parcel or dwelling within thirty (30) days, following the holiday.

16. The undersigned Owner reserves the right to modify, release, amend, void, transfer or delegate all the right, reservations and restriction herein set forth or the right to modify, release, amend, void or transfer any one, or more of the said herein set forth restrictions on Lots in said subdivision.

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

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

19. COVENANT WITH RESPECT TO MAINTENANCE OF LOT AND IMPROVEMENTS. Each owner shall keep his or her lot and the structure Thereon in good order and repair including but not limited to the seeding, watering, mowing of all lawns, the pruning and cutting of all shrubbery and trees, the painting (or other appropriate external care) of the structure all in a manner and with such frequency as is consistent with good property management. NO owner of any lot shall modify the structure on his or her lot by adding a room or rooms, changing the roof lines, adding decks, materially changing or altering the color or making other alterations in the exterior appearance of the structure without the express written approval of the Planning Commission to the City of Pelham, Alabama. Each owner in acquiring title to his or her respective lot acknowledges that décor, color scheme and design have been selected in such a manner to be consistent and harmonious with other homes within the subdivision and agrees to maintain his or her respective lot and structure in such a manner as to maintain and perpetuate the visual harmony within the subdivision.

20. DAMAGE OR DESTRUCTION. In the event of damage or destruction to any structure within the subdivision, the respective owner thereof agrees as follows:

- (i) In the event of total destruction, the owner shall within sixty (60) days clear the lot of debris and commence to rebuild and reconstruct the structure in conformity with the colors, material, plans and specifications of the original structure so destroyed subject to any changes or modifications as may be approved by the Architectural Control Committee.
- (ii) In the case of partial damage or destruction the owner shall as promptly as the insurance adjustment may be made, cause the damage or destruction to be repaired and restored in a first class condition in accordance with the plans and specifications of the original structure and in conformity with its original exterior painting and décor. The Architectural Control Committee must

approve any changes or alterations. In no event shall any damaged structure be left un-repaired or un-restored in excess of sixty (60) days.

21. ARCHITECTURAL CONTROL COMMITTEE. As stated above, no building, fence or wall shall be erected, placed or altered on any lot until the construction plans, specifications and a plan showing the location of the structure have been approved by the Architectural Control Committee as to quality of workmanship, materials and harmony of external design with existing structures and as to location with respect to topography and finish grade elevation. Approval shall be provided as herein below set forth:

(i) Architectural Control Committee Membership. A majority of the committee May designate a representative to act for it. In the event of death or resignation of any member of the committee, the remaining members shall have full authority to designate a successor. Neither the members of the committee nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant.

(ii) The Architectural Control Committee shall serve until such time as Owner has conveyed by recorded deed all the subject real estate. Upon the occurrence of said event, the then record owners of the majority of the lots within the said subdivision which have been committed and made subject to these covenants shall have the power through a duly recorded written instrument to change the membership or the committee from time to time but no more frequently than once in any twelve (12) month period.

IN WITNESS WHERE OF, the undersigned Active Building Contractors, Inc.
hereunto set its hand and seal on this 13 day of August 2003.

ATTEST:

J. Donald Gilbert

ACTIVE BUILDING CONTRACTORS, INC.

By: J. Donald Gilbert
J. Donald Gilbert, President

STATE OF ALABAMA
COUNTY OF SHELBY

I, THE UNDERSIGNED A Notary Public in and for said County in said State, hereby
certify that J. Donald Gilbert whose name as President of Active Building Contractors,
Inc. a corporation, is signed to the foregoing instrument and who is known to me,
acknowledged before me on this day that, being informed of the contents of the
conveyance, he, as such officer and with full authority, executed the same voluntarily for
and as the act of said corporation.

Given under my hand and official seal, this the 13th day of August 2003.

Barbara Ann Hyde
Notary Public
My Commission Expires: 2-04-05