

STATE OF ALABAMA)
COUNTY OF BALDWIN)

DECLARATION OF COVENANTS REGARDING
AZALEA TRACE SUBDIVISION
(PHASE 1)

This Declaration of Covenants regarding Azalea Trace Subdivision, (the "Declaration") made this 21st day of March, 1996, by MAGNOLIA LAND COMPANY, INC., a corporation, (the "Developer"), applicable to Azalea Trace Subdivision (the "Subdivision").

WHEREAS, the Developer owns that certain land (Phase 1) located in Baldwin County, Alabama, as shown on the Subdivision Plat of Azalea Trace Subdivision recorded at Slide 1637-A in the records in the Office of the Judge of Probate of Baldwin County, Alabama, (the "Property");

WHEREAS, the Developer desires to provide of the preservation of the value of the Subdivision and for the maintenance of the Common Properties; and to this end, the Developer has consented to subject the Property to the covenants, restrictions, easement, affirmative obligations, charges and liens hereinafter set forth (the "General Covenants" or "these Covenants"), each and all of which is and are hereby declared to be for the benefit of the Property and every owner of any and all parts thereof;

W I T N E S S E T H :

NOW, THEREFORE, the Developer hereby declares that the Property is and shall be held, transferred, sold, conveyed, given, purchased, leased, occupied and used subject to these Covenants. These Covenants, the benefits of these Covenants and the affirmative and negative burdens of these Covenants shall touch and concern and run with the Property.

ARTICLE I
DEFINITIONS

In this Declaration, the following words will have the meaning ascribed to them in this Article I:

Section 1.01 ASSOCIATION shall mean and refer to The Property Owners Association of Azalea Trace Subdivision, Inc., an Alabama non-profit corporation, its successors and assigns. This is the Declaration of Covenants to which the Articles of Incorporation and By-Laws of the Association make Reference.

Section 1.02 COMMON PROPERTY OR PROPERTIES OR COMMON AREA PROPERTY OR PROPERTIES shall mean and refer to that certain real and/or personal property conveyed to the Association by the Developer in accordance with Section 8.01.

Section 1.03 DEVELOPER shall mean and refer to Magnolia Land Co., Inc., a corporation, its successors and assigns.

Section 1.04 DWELLING UNIT shall mean and refer to that portion of any Improved Lot intended for use, or being used, as a single-family residential dwelling.

Section 1.05 ENCLOSED LIVABLE AREA shall mean and refer to that area of the Dwelling Unit that is completely enclosed and protected from the weather (heated and cooled) and intended as the living quarters of the Dwelling Unit.

Section 1.06 IMPROVED LOT shall mean and refer to a Lot on which is located a building and/or other structure(s) as to which required approvals for use and occupancy have been obtained.

Section 1.07 INSTITUTIONAL MORTGAGE shall mean and refer to any federal or state chartered bank, life insurance company, federal or state savings and loan association or real estate investment trust which holds a first mortgage or other first lien or charge

convenient, in the sole judgment of the Developer, to reflect the different character, if any, of the additional properties.

(b) Withdrawal. The Developer, its successors and assigns, without consent from the Association or the Owners, shall have the right, at any time or from time to time, to withdraw portions of the Property from this Declaration. The withdrawal authorized by this subsection shall be made by filing in the Office of the Judge of Probate, Baldwin County, Alabama, an amendment hereto with respect to the property which has been withdrawn.

Section 2.03 PLATTING AND SUBDIVISION OF THE PROPERTY. The Developer, its successors and assigns, without consent from the Association or the Owners, shall be entitled at any time and from time to time to subdivide, plat and/or replat all or any portion or part of the Property, and to file subdivision restrictions and/or amendments thereto with respect to any undeveloped portion or portions of the Property.

ARTICLE III GENERAL COVENANTS AND RESTRICTIONS

Section 3.01 PURPOSES. The primary purpose of these covenants and restrictions and the foremost consideration in the origin of same has been the creation of a subdivision that is aesthetically pleasing and functionally convenient. The establishment of objective standards relating to design, size and locations of dwellings and other structures makes it impossible to take full advantage of the individual characteristics of each parcel of property and of technological advances and environmental values. For this reason such standards are not established by these Covenants. In order to implement the purposes of these Covenants, the Developer shall establish and amend from time to time objective guidelines which shall be in addition to these Covenants and shall be called the Azalea Trace Guidelines.

Section 3.02 LOTS LIMITED TO RESIDENTIAL USE. All Lots shall be used for single-family residential purposes exclusively. No structure, except as hereinafter provided, shall be erected, altered, placed, attached to or permitted to remain on any Lot other than those structures and improvements approved for use and occupancy by the Developer in accordance with the Azalea Trace Subdivision Design Guidelines published from time to time by the Developer.

Section 3.03 SITING. All Dwelling Units, buildings, and other improvements must be located within the setback lines as shown on the Subdivision Plat and in accordance with the Azalea Trace Subdivision Design Guidelines. All improvements shall be located so that the maximum view and privacy will be available to each Dwelling Unit.

Section 3.04 SIGNS. No signs shall be erected or maintained on the Property or on any Lot at any time by anyone, including without limitation, a Property Owner, realtor, contractor, or subcontractor, except the following approved signs: (as) one (a) "For Sale" or "For Rent" Sign; (2) one (1) sign for a contractor and/ or architect displayed during construction for a maximum of twelve (12) months or until completion of construction, whichever shall first occur; (3) a sign which must be posted as a result of legal proceedings pursuant to a statute or court order; or (4) a sign which has been specifically approved in writing by the Developer. The Developer reserves the right to restrict the size, color, content, location, number and method of display of each approved sign.

Section 3.05 MAILBOXES. No mailboxes may be erected or maintained on the Property except mailboxes approved by the Developer. The actual cost of providing, erecting and maintaining a mailbox, including Developer approved numbering or lettering, shall be paid by the Property Owner. The Developer reserved the right to designate the location of all mailboxes.

Section 3.06 UNSIGHTLY CONDITIONS. It shall be the responsibility of each Property Owner and tenant thereof to prevent the accumulation of litter, trash, packing crates or rubbish or the development of any unclean, unsightly, or unkempt condition of buildings or grounds on their Lot either before, during or after construction. Each Owner must provide or require an on-site dumpster for trash and litter during construction. It shall also be

and fit as a building site including, but not limited to, the relocation of any Lot or easements, walkways, tunnels, rights-of-way, roadways, and recreational facilities. The provisions of this Section shall also not prohibit the combining of two (2) or more contiguous Lots into one (1) large Lot. Three (3) Lots may be divided into two (2) Lots with approval by the Developer.

Section 3.16 INGRESS AND EGRESS. The Property Owner, in accepting title to Property conveyed subject to the covenants and restrictions of this Declaration, waives all rights of uncontrolled and unlimited egress and ingress to such Property (and waives such rights for any person claiming entry rights by virtue of any relationship or permission of such Property Owner and successors in title) and agrees that such ingress and egress to the Owner's Lot may be limited to roadways built or approved by the Developer. The Developer, its successors, assigns, agents, employees and licensees, expressly reserve a right of ingress and egress upon and through any and all roads, roadways, abridges and any other designated access routes in the Subdivision to any portion or part of the Subdivision or Property. Nothing in this Section shall be construed as placing an affirmative obligation on the Developer to provide or construct any road, bridge, or other means of ingress and egress to or within the Subdivision.

Section 3.17 LANDSCAPING. No weeds, underbrush or other unsightly growth which would unreasonably interfere with the enjoyment of adjacent Property Owners shall be permitted to grow or remain upon any part of a Lot and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain upon any part of a Lot, including vacant parcels, Common Area, or road right-of-way. All landscaping of any Lot shall be completed within ninety (90) days from the completion of construction of the improvements. These provisions shall not apply to the Developer until the last Lot is sold to an Owner other than the Developer.

Section 3.18 TEMPORARY STRUCTURES. No structure of a temporary character, trailer, basement, tent or shack shall be used at any time as a residence either temporarily or permanently. No storage building of any type shall be permitted unless such building and its location are approved by the Developer.

Section 3.19 FENCES AND HEDGES. All fences, hedges, and similar improvements must be constructed, installed, and maintained in accordance with the Azalea Trace Subdivision Design Guidelines. Chain link or any other wire fences shall not be used. A wooden, brick, stucco, wrought iron or similar approved fence or privacy screen may be used if constructed and placed in accordance with the Azalea Trace Subdivisions Design Guidelines.

Section 3.20 GARAGES. All Dwelling Units must have a minimum of a one (1) vehicle enclosed garage and must meet the requirements of the Azalea Trace Subdivision Design Guidelines. No carports will be allowed. In all cases electric automatic door openers/closers shall be installed and used. Any garages visible from the street must be kept closed when not in use.

Section 3.21 RECREATIONAL VEHICLES AND BOATS. No boat, boat trailer, house trailer, horse trailer, trailer, camper, motor home, unmaintained cars, trucks, or any similar items shall be stored on or at any Lot for a period of time in excess of twenty-four (24) hours unless housed in an enclosed garage or parked or stored in an area of the Property specifically designated for such use by the Developer.

Section 3.22 REMEDIES FOR VEHICLE AND RECREATION EQUIPMENT VIOLATIONS. Any such Vehicle or recreational equipment parked in violation of these or other regulations contained herein or in the rules and regulations now or hereafter adopted by the Association may be towed by the Association or the Developer, at the sole expense of the Owner of such vehicle or recreational equipment, if it remains in violation for a period of twenty-four (24) hours. The Association or the Developer shall not be liable to the Owner of such vehicle or recreational equipment for trespass, conversion or otherwise, nor guilty of any criminal act by reason of such towing, and neither its removal or failure of the Owner to receive any notice of said violation shall be grounds for relief of any kind.

Section 3.23 CONTRACTORS. All improvements constructed on any Lot shall be made by a builder or contractor approved by the Developer. No Owner may act as a general contractor for the construction of a Dwelling Unit or other improvement on an Owner's own

Section 5.03 ARCHITECTURAL AND DESIGN GUIDELINES. The Developer will publish Azalea Trace Subdivision Design Guidelines, as amended, from time to time which will set forth minimum criteria and controls for construction of improvements on the Property. In order to further carry out the objectives set forth in this Section, the Azalea Trace Subdivision Design Guidelines will provide for Lot line setbacks, Lot coverage, landscaping, types of materials approved for incorporation in the exterior construction of structures and other requirements relating to the development of the Subdivision. All improvements or modifications to the Property shall meet and comply with the Azalea Trace Subdivision Guidelines, as amended or modified from time to time. All plans submitted to the Developer must incorporate the provisions of these Guidelines prior to the Developer becoming obligated to review the plans, and the failure by the Developer to review non-conforming plans shall not be deemed a waiver of any of the provisions of this Section.

Section 5.04 APPROVAL NOT A GUARANTEE OR REPRESENTATION OF PROPER DESIGN OR GOOD WORKMANSHIP. No approval of plans, location or specifications, and no publication of Azalea Trace Subdivision Design Guidelines shall ever be construed as representing or implying that such plans, specifications or standards will, if followed, result in a properly designed residence or that it will comply with applicable federal, state or local governmental regulations. Such approvals and standards shall in no event be construed as representing or guaranteeing that any residence or improvement thereto will be built in a good and workmanlike manner. The Developer, its agents and assigns, shall not be responsible or liable for any defects in any plans or specifications submitted, revised or approved under these Covenants nor for any defects in construction pursuant to such plans and specifications. The Property Owner shall have sole responsibility for compliance with approved plans and does hereby hold the Developer, its agents or assigns, harmless for any failure thereof caused by the Property Owner's architect or builder. The Developer reserves the right to prohibit the Property Owner's builder and/or general contractor from the site in the event it is determined that failure to comply with approved plans is determined by the Developer, in its sole discretion, to be intentional or due to gross negligence.

ARTICLE VI DWELLING UNITS

Section 6.01 BUILDING SIZE. All Dwelling Units shall comply with all applicable guidelines and approvals of the Developer and the Azalea Trace Subdivision Design Guidelines and be designed and constructed in an architecturally aesthetic manner.

Section 6.02 SETBACK AND SIDE LINE REQUIREMENTS. All buildings built on any Lot shall comply with the setback and side lines restrictions as required upon such Lot as set forth in the applicable Azalea Trace Subdivision Design Guidelines and the recorded Plat. Such setback restrictions shall be a covenant running with the land.

Section 6.03 COMPLETION OF CONSTRUCTION. Dwelling Units may not be temporarily or permanently occupied until the exteriors thereof have been completed. During construction, the Property Owner shall require the contractor to maintain the Lot in a clean and uncluttered condition. Upon completion of construction, the Property Owner shall cause the contractor to immediately remove all equipment, tools, construction material and other debris from the Lot. Any damage to roadways, paths, Common Properties or any other property owned by any person or entity caused by the Property Owner's contractor or other parties providing labor or services to the Property Owner shall be repaired by the Property Owner, or by the Developer at the Property Owner's expense.

Section 6.04 SERVICE YARDS. Each Property Owner shall provide a visually screened area to serve as a service yard and an area in which garbage receptacles, electric meters, air conditioning equipment, and other unsightly objects must be placed or stored in order to conceal them from view from the road and adjacent properties. No window air conditioning units may be installed or used on any Lot, except in the garage of model homes.

Section 6.05 GOVERNMENTAL APPROVAL. All construction and alterations shall also be subject to applicable permit requirements and to all applicable governmental laws, statutes, ordinances, rules, regulations, orders and decrees.

**ARTICLE VIII
MEMBERSHIP IN THE ASSOCIATION**

The Developer has formed or will cause to be formed The Property Owners Association of Azalea Trace Subdivision, Inc., an Alabama non-profit corporation.

Section 8.01 MEMBERSHIP. Every Owner, including the Developer, shall automatically, and by virtue of such status as an Owner, be a Member of the Association. Membership shall be automatic and shall be appurtenant to and may not be separated from ownership of any Lot. Transfer of record of the ownership of any Lot shall automatically transfer membership in the Association.

Section 8.02 VOTING RIGHTS AND GOVERNANCE OF THE ASSOCIATION. voting rights of Members are as follows:

A. Class A Members consisting of all Members other than the Developer, shall be entitled to cast one (1) vote for each Improved or Unimproved Lot owned in all matters in which membership voting is authorized in the Declaration, the Articles of Incorporation, the By-Laws or any other rules and regulations binding upon the Association, except as specifically provided herein.

B. The Class B Member, being the Developer, shall be entitled to cast five (5) votes for each Improved or Unimproved Lot owned by the Developer in all matters in which membership voting is authorized in the Declaration, the Articles in Incorporation, the by-Laws or any other rules and regulations binding upon the Association. So long as there is a Class B Member of the Association, the Class B Member shall be entitled to elect a majority of the members of the Board of Directors of the Association.

C. Notwithstanding any provision therein to the contrary, no amendment to the Declaration or to the Articles of Incorporation shall be effective without the written consent of the Class B Member, so long as there is a Class B Member of the Association, that is, until the Developer has sold or otherwise conveyed all of the Lots it owns.

D. Notwithstanding the preceding paragraphs, if any assessment required to be paid by a Member is past due as of the time a vote is being taken, such Member shall not be entitled to cast any vote at such time with respect to the Lot on which the assessment is past due.

E. A Member entitled to more than one (1) vote all of the Member's votes for or against a matter submitted to the Members for a vote, or such Member may abstain from voting entirely, i.e., a Member entitled to more than one(1) vote may not split or fragment such Member's votes, but must vote (or abstain from voting) as a single unit.

F. When any Lot entitling the Owner thereof to membership in the Association has Owners which are corporation, trusts or partnerships, or where two (2) or more persons or entities are Owners, whether fiduciaries, joint tenants, tenants in common, tenants in partnership or in any other manner of joint or common ownership, one (1) officer, trustee, person or entity shall be designated the Voting Member for all the others. Written evidence of such designation in a form satisfactory to the Association shall be delivered to the Association prior to the exercise of a vote by such Owners.

**ARTICLE IX
MEMBERS' RIGHTS IN THE COMMON PROPERTIES**

Section 9.01 MEMBERS' EASEMENTS OF ENJOYMENT IN COMMON PROPERTIES. Subject to the provisions of this Declaration, the rules and regulations of the Association, and any fees or charges established by the association, every Member and every guest or lessee of such Member shall have an easement of enjoyment in and to the Common Properties, and such easement shall be appurtenant to and shall pass with the title to every Lot. A Member's or lessee's spouse and children who reside with such Member or lessee on the Property shall have the same easement of enjoyment hereunder as a Member. The easement of enjoyment herein shall pass from a Member to a lessee during the lease term; provided, however, the Association may adopt additional restrictions to its rules and regulations

conditions shall be authorized by the affirmative vote of at least two-thirds (2/3) of the total number of votes which may be voted by all the Members regardless of class, present or represented by proxy at a meeting called for such purposes, a quorum being present. Notwithstanding the foregoing, such a vote to give or sell as contemplated by this paragraph shall not be effective without the written consent of the class B Member, so long as there is a Class B Member with voting rights, as set forth herein. A true copy of such resolution together with a certificate of the results of the vote taken thereon shall be made and acknowledged by the President or Vice President and Secretary or Assistant Secretary of the Association, and such certificate shall be annexed to any instrument or dedication or transfer affecting the Common Properties prior to the recording thereof. Such certificates shall be conclusive evidence of authorization by the Members;

(i) restrictions and limitations affecting all Property of the Subdivision as set forth in the General Covenants; and

(j) the rights that others may have, as referred to in Section 10.01, to use certain Common Properties.

Section 9.04 EASEMENTS OF JOINT OWNERS. In those instances where a Lot or Dwelling Unit is owned by two (2) or more entitles or persons (who do not have the relationship of spouse, parent or minor child, one to the other) or by a trust, corporation, partnership or any other form of legal entity, such owners, trust, corporation or partnership or other entity shall annually appoint by written designation one (1) person as the "Primary Member." Such Primary Member shall have the same easement of enjoyment of Common Properties as Members who own or occupy such Property singularly. The remaining Members, fiduciaries, beneficiaries, officers or partners [in a number not to exceed six (6)] shall be entitled an easement of enjoyment subject to the limitations set forth in this Declaration in the Common Properties, by each paying to the Association annually an amount equal to ten percent (10%) of the annual assessment charged against the Property owned by such persons, trusts, partnership, corporation or entity. This provision shall not apply to primary family members (husband, wife, son, step-son, daughter, step-daughter), subject to a maximum of two (2) primary families per Dwelling Unit or Lot.

ARTICLE X COVENANTS FOR ASSESSMENTS

Section 10.01 CREATION OF THE LIEN AND PERSONAL OBLIGATIONS FOR ASSESSMENTS. Each Owner, except the Developer, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to all the terms and provisions of this Declaration and to pay to the Developer or the Association as provided below the following: (1) annual assessments or charges; and (2) special assessments or charges for the purposes set forth in this Article, both such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments shall be a charge and continuing lien on the real Property and improvements thereon against which each such assessment is made. Each such assessment, together with interest thereon at a rate per annum equal to ten percent (10%) from the date of delinquency until collected (unless waived by the Board), and the costs of collection thereof, including reasonable attorneys' fees, shall also be the personal obligation of the Owner of such real Property at the time when the assessment first becomes due and payable. In the case of co-ownership of a Lot, all of such co-Owners shall be jointly and severally liable for the entire amount of the assessment, interest, penalties, and cost of collection. If an assessment is not paid within forty-five (45) days after the due date, such assessment shall then be delinquent and interest shall be added to the amount as provided herein and a penalty in an amount to be determined annually by the Board of Directors of the Association and consistently applied shall be added to such assessment, and further, the Association may bring an action at law against the Owner personally, and there shall be added to the amount of such assessment the Association's actual attorneys' fees and disbursements related to such action. In the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and such actual council fees and disbursement together with the costs of the action. Unless otherwise provided by the Board of Directors, annual assessments shall be due and payable on or before the first day of the calendar year for which the assessment is due.

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The proportion of each special assessment to be paid by the Owners of the assessable Property shall be equal to their respective proportions of the annual assessments made for the assessment year during which such special assessments are levied.

Section 10.05 RESERVE FUNDS. The Association may establish reserve funds from its annual assessments to be held in reserve in an interest bearing account or in obligations of the United States, State of Alabama, or any agency of either, or in Triple-A debt, or in prime commercial paper with a maturity of not more than nine (9) months, as a reserve for (a) major rehabilitation or major repairs, fire, natural disaster, or other casualty loss, (b) recurring periodic maintenance, and (c) initial costs of any new service to be performed by the Association.

Section 10.06 DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS. Notwithstanding anything in the foregoing to the contrary, the annual assessments provided for herein shall commence on January 1, 1995. The annual assessment for the remainder of the year 1995 shall be due and payable on the date the Lot is purchased.

Section 10.07 DUTIES OF THE BOARD OF DIRECTORS. The Board of Directors of the Association shall fix the amount of the annual assessment against each Lot, in accordance with the assessment schedule as provided hereinabove, and shall at that time direct the preparation of an index of the properties and assessments applicable thereto which shall be sent promptly to every Member subject thereto.

The Association shall upon written demand from any Owner at any time furnish to such Owner liable for any assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence against all but the Owner of payment of any assessment therein stated to have been paid.

Section 10.08 SUBORDINATION OF THE LIEN OF MORTGAGE. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage now or hereafter placed upon the properties subject to assessment; provided, however, that such subordination shall apply only to the assessments occurring subsequent to the date such mortgage becomes of record and provided further, that upon a sale or transfer of such Property pursuant to foreclosure, or any other proceeding or deed in lieu of foreclosure, the title acquired by the purchaser of such Property shall be subject to the lien of such subsequent assessments.

Section 10.09 EXEMPT PROPERTY. The following property, individuals, partnerships, or corporation subject to this Declaration shall be exempted from the assessments, charges and lien created herein:

- (a) the Developer and any Lot(s) owned by the Developer;
- (b) the grantee in conveyances made for the purpose of granting utility and drainage easements;
- (c) the Common Properties;
- (d) property which is used in the maintenance and service of facilities within Common Properties, or by non-profit, governmental or charitable institutions; and
- (e) Lots owned by approved builders and contractors as designated by the Developer in accordance with Section 3.26 of the Declaration, during the calendar year 1995 only.

Section 10.10 ANNUAL STATEMENTS. The President, Treasurer, or such other officer as may have custody of the funds of the Association, within ninety (90) days after the close of each fiscal year of the Association, shall prepare and execute general itemized statements as of the close of such fiscal year showing the actual assets and liabilities of the Association, and a statement of revenues, costs and expenses. The name of any creditor to which an amount of more than Two Hundred Fifty and No/100 Dollars (\$250.00) is owed by the Association shall be set out in such statement. The Association shall furnish to each Member of the Association who may make a request therefor in writing, a copy of such statement within thirty (30) days after receipt of such request. Such copies may be furnished to the Member either in person or by mail.

Section 11.04 OBLIGATIONS OF THE ASSOCIATION. The Association shall not be obligated to carry out or offer any of the functions or services specified by the provisions of this Article. The functions and services to be carried out or offered by the Association at any particular time shall be determined by the Board of Directors of the Association or set forth in the By-Laws, taking into consideration the funds available to the Association and the needs of the Members of the Association.

Section 11.05 MORTGAGE AND PLEDGE. The Board of Directors of the Association shall have the power and authority to mortgage the Property of the Association and to pledge the revenues of the Association as security for loans made to the Association to perform its authorized functions. The Developer may make loans to the Association, subject to approval by the Developer of the use to which such loan proceeds will be put and the terms pursuant to which such loans will be repaid. Notwithstanding anything in this Declaration to the contrary, the Association shall not be allowed to reduce the limits of the maximum regular annual assessments at any time there are outstanding any amounts owing the Developer from loans made by the Developer to the Association.

Section 11.06 TRANSFER OF AUTHORITY. This Declaration provides the Developer with various controls and rights, to be exercised (if at all) at the discretion of the Developer. This Declaration further provides that any of the Developer's rights and powers set forth herein may be specifically assigned to the Association. In the event that such powers are assigned of record to the Association, the Association shall promptly provide for appropriate procedures to perform its obligations pursuant to the powers transferred to it.

ARTICLE XII ARCHITECTURAL CONTROL BY ASSOCIATION

Section 12.01 BOARD. Upon assignment of the architectural control function by the Developer to the Association, the Association shall appoint an Architectural Review Board composed of three (3) people, all of whom shall be appointed by the Board of Directors of the Association. At least one (1) Member of the Association other than the officers, employees or agents of the Developer shall be a member of the Architectural Review Board. The Board of Directors of the Association may establish the rules of procedure for the Architectural Review Board in connection with the General Covenants.

Section 12.02 ARCHITECTURAL REVIEW AND APPROVAL FOR THE PROPERTY. Upon assignment by the Developer of architectural control functions to the Association with respect to any Lot within the Subdivision, the Architectural Review Board shall function to ensure compliance with the restrictions set forth herein and shall in all respects with regard to such Lot succeed to the powers of the Developer with respect to architectural review and approval. The Architectural Review Board shall have the general rights of enforcement as set forth in this Declaration, including without limitation the right to enjoin violations.

Section 12.03 TRANSFER OF ARCHITECTURAL REVIEW AND APPROVAL. The Developer may assign its architectural control functions as provided in this Declaration, including those set forth in Article V, at any time. The association shall be required to accept such assignment and comply with the provisions contained in this Declaration. Thereafter, all architectural control functions of the Developer as provided in this Declaration shall be performed by the Association.

ARTICLE XIII AMENDMENT OF DECLARATION

Section 13.01 AMENDMENT BY DEVELOPER. The Developer reserves the right unilaterally to amend this Declaration, and to do so at such time, and upon such conditions, in such form and for such purposes as it, in its sole discretion, shall deem appropriate by preparing and recording an amendment hereto; provided, however, that this right of unilateral amendment shall expire after all Lots included herein or hereafter added by Developer pursuant to Section 2.02 have been sold to Owners other than the Developer, or fifteen (15) years from the date of the recording of this Declaration,

Association by a proceeding at law or in equity against any person or persons violating or attempting to violate or circumvent any covenant or restriction, either to restrain violation or to recover damages, and to enforce any lien created by this Declaration. Failure by the Association or any Member or the Developer to enforce any covenant or restrictions herein contained for any period of time shall in no event be deemed a waiver or estoppel of the right of any of the foregoing to enforce same thereafter.

Section 14.03 INTERPRETATION. The Board of Directors of the Association shall have the right to determine all questions arising in connection with this Declaration and to construe and interpret its provisions, and the determination of the Board shall be final and binding.

Section 14.04 SEVERABILITY. Should any covenant or restriction herein contained, or any article, section, subsection, sentence, clause, phrase or term of this Declaration be declared to be void, invalid, illegal, or unenforceable, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no way affect the other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect.

Section 14.05 AUTHORIZED ACTION. All actions which the Association is allowed to take under this instrument shall be authorized actions of the Association in the manner provided for in the Articles and By-Laws of the Association, unless the terms of this instrument provide otherwise.

Section 14.06 NOTICE. Any notice required to be sent to any Member under the provisions of this Declaration shall be deemed to have been properly sent, and notice thereby given, when mailed, with the proper postage affixed, to the address of such Member appearing on the Association's Membership list not less than thirty (30) days prior to the date of the meeting at which any proposed action is to be considered. Notice to one or more co-Owners or co-tenants of a Lot shall be considered notice to all co-Owners. It shall be the obligation of every Member to immediately notify the Secretary of the Association in writing of any change of address. Any person who becomes a Member following the first day of the calendar month in which said notice is mailed shall be deemed to have been given notice if notice was given to the Member's predecessor in title.

Section 14.07 LIMITED LIABILITY. In connection with all review, acceptances, inspections, permissions, consents or required approvals by or from the Developer contemplated under this Declaration, the Developer shall not be liable to an Owner or to any other person on account of any claim, liability, damage or expense suffered or incurred by or threatened against an Owner or such other person and arising out of or in any way relating to the subject matter of any such review, acceptance, inspection, permission, consent, or required approval, whether given, granted, or withheld.

Section 14.08 TERMINATION OF ASSOCIATION. In the event that this Declaration is declared to be void, invalid, illegal, or unenforceable in its entirety, or in such a significant manner that the Association is not able to function substantially as contemplated by the terms hereof, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, or if the Members of the Association should vote not to renew and extend this Declaration as provided for herein, all Common Properties owned by the Association at such time shall be transferred to a Trustee appointed by the Circuit Court of Baldwin County, Alabama, which Trustee shall own and operate said Common Properties for the use and benefit of Owners within the Property as set forth below:

(a) Each Owner of any Lot shall be subject to an annual assessment which shall be paid by the Owner to the Trustee. The amount of such annual assessment and its due date shall be determined by the Trustee, in accordance with the provisions of Article XI.

(b) The Trustee shall be required to use the funds collected as annual assessments for the operation, maintenance, repair and upkeep of the Common Properties as provided in this Declaration. The Trustee may charge as part of the cost of such functions the reasonable value of its services in carrying out the duties herein provided. The Trustee shall not have the obligation to provide for the operation, maintenance, repair and upkeep

STATE OF ALABAMA
COUNTY OF BALDWIN

**AMENDMENT TO DECLARATION OF COVENANTS
REGARDING AZALEA TRACE SUBDIVISION
(PHASE 2)**

THE UNDERSIGNED, MAGNOLIA LAND COMPANY, INC., an Alabama corporation, pursuant to the provisions of Section 13.01 of the Declaration of Covenants Regarding Azalea Trace Subdivision recorded in the Office of the Judge of Probate of Baldwin County, Alabama in Miscellaneous Book 87, page 946, files this amendment to the Declaration of Covenants Regarding Azalea Trace Subdivision dated March 21, 1996 and recorded in the Office of the Judge of Probate of Baldwin County, Alabama on April 1, 1996 in Miscellaneous Book 87, pages 946-972 and amendment dated December 20, 1996 and recorded in the Office of the Judge of Probate of Baldwin County, Alabama on December 27, 1996 in Miscellaneous Book 91, page 1034-1035, and amendment recorded in the Office of the Judge of Probate of Baldwin County, Alabama on April 27, 1999 as Instrument Number 489968;

1. Phase 2 of Azalea Trace Subdivision, comprised of Lots 53 through 95, inclusive, as shown on plat recorded in the Office of the Judge of Probate of Baldwin County, Alabama on Slide 2031-F are hereby dedicated to the Subdivision.

2. Except as modified herein, Lots 53 through 95, inclusive, shall be subject to all of the terms, covenants and conditions of the Declaration of Covenants Regarding Azalea Trace Subdivision as amended.

3. The residences constructed on Lots 80 through 95, inclusive, shall contain not less than 1,200 square feet of heated and cooled space.

4. Lots 80 *through* 95, inclusive, shall pay assessments as provided in the Declaration at a rate equal to twenty-five (25%) percent of the assessments of all other lots in the Subdivision.

5. Except as specifically amended herein, all of the remaining terms, covenants and conditions of the Declaration of Covenants Regarding Azalea Trace Subdivision (Phase 1) dated March 21, 1996 and recorded in the in the Office of the Judge of Probate of Baldwin County, Alabama on April 1, 1996 in Miscellaneous Book 87, pages 946-972 and amendment dated December 20, 1996 and recorded in the Office of the Judge of Probate of Baldwin County, Alabama on December 27, 1996 in Miscellaneous Book 91, page 1034-1035, and amendment recorded in the Office of the Judge of Probate of Baldwin County, Alabama on April 27, 1999 as Instrument Number 489968 shall remain in full force and effect.

STATE OF ALABAMA
COUNTY OF BALDWIN

I CERTIFY THIS INSTRUMENT WAS
FILED AND TAXES COLLECTED ON

DEC 27 1 28 PM '96

RECORDED IN MISC. BOOK 87, PAGE 972-35
JUDGE OF PROBATE

AMENDMENT TO
DECLARATION OF COVENANTS REGARDING
AZALEA TRACE SUBDIVISION
(PHASE 1)

The undersigned, MAGNOLIA LAND COMPANY, INC., an Alabama corporation, constituting the owner of all of the lots located within Azalea Trace Subdivision recorded in the Office of the Judge of Probate of Baldwin County, Alabama at Slide 1637-A, files this amendment to the Declaration of Covenants Regarding Azalea Trace Subdivision (Phase 1) dated March 21, 1996 and recorded in the Office of the Judge of Probate of Baldwin County, Alabama on April 1, 1996 in Miscellaneous Book 87, pages 946-972.

1. Section 3.18 of said Declaration of Covenants Regarding Azalea Trace Subdivision (Phase 1) is amended to read as follows:

Section 3.18 TEMPORARY STRUCTURES. No structure of a temporary character, trailer, basement, tent or shack shall be used at any time as a residence either temporarily or permanently. No storage building of any type shall be permitted unless such building is approved by the Developer.

2. Section 3.20 of said Declaration of Covenants Regarding Azalea Trace Subdivision (Phase 1) is hereby amended to read as follows:

Section 3.20 GARAGES. All Dwelling Units must have a minimum of a one (1) vehicle enclosed garage and must meet the requirements of the Azalea Trace Subdivision Design Guidelines. No carports will be allowed. In all cases electric automatic door openers/closers shall be installed and used. Any garages visible from the street must be kept closed when not in use.

3. Except as specifically amended herein, all of the remaining terms, covenants and conditions of the Declaration of Covenants Regarding Azalea Trace Subdivision (Phase 1) dated March 21, 1996 and recorded in the Office of the Judge of Probate of Baldwin County, Alabama on April 1, 1996 in Miscellaneous Book 87, pages 946-972 shall remain in full force and effect.

PH 0091 PAGE 1034

STATE OF ALABAMA
COUNTY OF BALDWIN

**AMENDMENT TO
DECLARATION OF COVENANTS REGARDING
AZALEA TRACE SUBDIVISION
(PHASE 1)**

State of Alabama, Baldwin County
I certify this instrument was filed
and taxes collected on:

1995 April -27 1:35PM

Instrument Number 489968 Pages 2
Recording 5.00 Mortgage
Deed Min Tax
Index BP 1.00
Archive

Adrian T. Johns, Judge of Probate

The undersigned, MAGNOLIA LAND COMPANY, INC., an Alabama corporation, constituting the owner of thirty-one lots located within Azalea Trace Subdivision recorded in the Office of the Judge of Probate of Baldwin County, Alabama at Slide 1637-A, files this amendment the Declaration of Covenants Regarding Azalea Trace Subdivision (Phase 1) dated March 21, 1996, and recorded in the Office of the Judge of Probate of Baldwin County, Alabama on April 1, 1996, in Miscellaneous Book 87, pages 946-972, and amendment dated December 20, 1996, and recorded in the Office of the Judge of Probate of Baldwin County, Alabama on December 27, 1996, in Miscellaneous Book 91, pages 1034-1035.

1. Section 3.18 of said Declaration of Covenants Regarding Azalea Trace Subdivision (Phase 1) is amended to read as follows:

Section 3.18 TEMPORARY STRUCTURES. No structure of a temporary character, trailer, basement, tent or shack shall be used at any time as a residence either temporarily or permanently. No storage building of any type shall be permitted unless such building and its location are approved by the Developer.

2. Section 6.04 of said Declaration of Covenants Regarding Azalea Trace Subdivision (Phase 1) is amended to read as follows:

Section 6.04 SERVICE YARDS. Each Property Owner shall provide a visually screened area to serve as a service yard and an area in which garbage receptacles, electric meters, air conditioning equipment, and other unsightly objects must be placed or stored in order to conceal them from view from the road and adjacent properties. No window air conditioning units may be installed or used on any Lot, except in the garage of model homes.

3. Except as specifically amended herein, all of the remaining terms, covenants and conditions of the Declaration of Covenants Regarding Azalea Trace Subdivision (Phase 1) dated March 21, 1996, and recorded in the Office of the Judge of Probate of Baldwin County, Alabama on April 1, 1996, in Miscellaneous Book 87, pages 946-972, and amendment dated December 20, 1996, and recorded in the Office of the Judge of Probate of Baldwin County, Alabama on December 27, 1996, in Miscellaneous Book 91, pages 1034-1035 shall remain in full force and effect.

489968

IN WITNESS WHEREOF, the undersigned has executed these presents on this the 27th day of April, 1999.

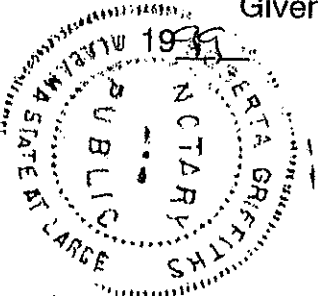
MAGNOLIA LAND COMPANY, INC.
an Alabama corporation

BY John B. Foley
JOHN B. FOLEY
ITS President

STATE OF ALABAMA
COUNTY OF BALDWIN

The undersigned, a Notary Public in and for said County, in said State, hereby certify that JOHN B. FOLEY, whose name as President of MAGNOLIA LAND COMPANY, INC. an Alabama 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 instrument, he, as such officer and with full authority, executed the same voluntarily, for and as the act of said corporation on the day the same bears date.

Given under my hand and official seal this, the 27th day of April,



Roberta Griffiths
NOTARY PUBLIC
My commission expires 9/11/02

THIS INSTRUMENT PREPARED BY:

MAGNOLIA LAND COMPANY, INC.
P.O. Box 1047
Foley, AL 36536
334-943-5037