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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR WINBORNE PARK, PHASE ONE
LOTS 1-49

THIS DECLARATION made on the date hereinafter set forth by W.M.C. Construction, Inc., a Corporation, hereinafter referred to as "Declarant", being the owner and mortgagor of the hereinafter described real property, with the exception of Lot 25, Winborne Park, Phase One, and First Southern Bank, "Bank", being the mortgagee of said real property, and Laura Jill Farris, who is the owner of Lot 25, Winborne Park, Phase One, whose husband is Randall K. Farris, who join in this Declaration for the purpose of subjecting Lot 25, Winborne Park, Phase One, to the covenants, conditions and restrictions set out in this Declaration.

W-I-T-N-E-S-S-E-T-H:

WHEREAS, Declarant is the owner of certain property in the City of Florence, County of Lauderdale, State of Alabama, which is more particularly described as:

All lands embraced in the map and plat of Winborne Park, Phase One, Lots 1 - 49, as recorded in the Office of the Judge of Probate of Lauderdale County, Alabama, in Plat Book 6, Page 285, except Lot 25 of said subdivision.

WHEREAS, the said Laura Jill Farris, whose husband is Randall K. Farris, is the owner of Lot 25, according to the map or plat of Winborne Park, Phase One, as recorded in the Office of the Judge of Probate of Lauderdale County, Alabama, in Plat Book 6, Page 285.

NOW, THEREFORE, Declarant and Laura Jill Farris and her husband, Randall K. Farris, hereby declare that all of the properties described above 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 real property and be binding on all the parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof. The Bank, by executing this instrument, hereby accepts and joins in this Declaration as mortgagee. Laura Jill Farris and her husband, Randall K. Farris, by executing this instrument, hereby accept and join in this Declaration as owner of

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Judge of Probate, Lauderdale County, Alabama

Lot 25, Winborne Park, Phase One.

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ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to The Winborne Park, Phase One, Homeowners Association", its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinabove described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean that certain real property including improvements thereon owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows:

That certain property as shown on the plat of Winborne Park, Phase One, as "retention & open space" said plat being recorded in the Office of the Judge of Probate of Lauderdale County, Alabama, in Plat Book 6, Page 285.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the properties with the exception of the Common Area.

Section 6. "Declarant" shall mean and refer to W.M.C. Construction, Inc., a Corporation, its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owner's 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 every Lot, subject to the following provisions:

Class B. The Class B member(s) shall be the Declarant and shall be entitled to ten (10) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of the following event:

- (a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership.

In the event additional residential property is annexed and new lots become subject to the Declaration of Covenants, Conditions and Restrictions of the Association, Class B membership shall be increased (or reinstated in the event Class B membership shall have ceased) for each Lot annexed, subject to the same voting rights set forth above.

ARTICLE IV

COVENANT FOR CAPITAL, MAINTENANCE AND OPERATION

EXPENSES ASSESSMENT AND LIENS THEREFOR

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association; (1) annual assessments (2) special assessments for capital improvements and operating expenses, and (3) any assessment created under Article V, such assessments to be established and collected as herein provided. All of said assessments, 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 assessment is made. The Association shall have the right to enforce all liens hereunder imposed to the same extent, including a foreclosure sale and deficiency decree, and subject to the same procedures as in the case of mortgages under applicable law. Each such assessment, together with interest, costs and reasonable attorney's fees incurred in the enforcement,

foreclosure or collection thereof, shall also be the personal joint and several obligation of the person or persons who was or were the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his or her successors in title unless expressly assumed by them. Declarant shall not be required to pay such annual assessment as to any Lots owned by it so long as Declarant elects, at its option, to provide the maintenance and improvements called for in Article IV, Section 2. At such time as Declarant is not maintaining and providing such maintenance and improvements, it shall pay such annual assessment on Lots owned by it.

Section 2. Purpose of Annual Assessment. The annual assessment levied by the Association shall be used exclusively for maintenance and improvement of the Common Area, operating expenses of the Association, and the maintaining, improvement and replacing of lawns and shrubs on all Lots and Common Area including mowing, raking, seeding and planting, to the extent funds are available by reason of such annual assessments or otherwise.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be THREE HUNDRED THIRTY DOLLARS (\$330.00) per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than 5% above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above 5% by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may from time to time fix the annual assessment at an amount not in excess of the maximum and may direct the date or dates of the payment thereof in one lump sum or in installments.

assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of eight percent (8%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, or both. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. All properties dedicated to, and accepted by, a local public authority and all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of Alabama shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

ARTICLE V

EXTERIOR MAINTENANCE

(a) The Association shall, to the extent allowable by monies available from annual assessments, provide for the maintaining, replacing and improvement of lawns and shrubs on all Lots including raking, mowing, seeding and planting. In the event the need for such maintenance, replacement or improvement is caused by or arises out of any willful or negligent act of the Owner, members of his or her family, or his or her guests or invitees, the cost of such shall be added to and become a part of the assessment to which such Lot is subject.

(b) In the event an owner of any lot in the Properties shall fail to maintain, restore and repair the roof, gutters, downspouts, exterior building surfaces and other exterior improvements in a manner satisfactory to the Board of Directors, the Association, after approval by two-thirds (2/3) vote of the Board of Directors, shall have the right, but not the obligation, through its contractors, agents and employees, to enter upon said parcel and to repair, maintain and restore such roof gutters, downspouts, exterior building surfaces and other exterior improvements. The cost of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject.

ARTICLE VI

ARCHITECTURAL CONTROL AND USE RESTRICTION

No building, fence, wall or others structure or exterior surface or roof of any building or structure shall be commenced, repaired, replaced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing as to harmony of external design, colors, materials and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. Without limiting the foregoing, such plans and specifications must include a

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Judge of Probate, Spalden County, Florence, Ala.

detailed statement of the colors of any paints or materials to be used in exterior surfaces and roofs. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after such plans and specifications have been submitted to it, as evidenced only by its written acknowledgment of receipt thereof, approval will not be required and this Article will be deemed to have been fully complied with. In any event, the lots shall be used solely for free standing single family residential purposes and not more than one single family residence may be erected, constructed or permitted to remain upon any Lot.

All residences must have a finished living area of at least 1600 square feet. All residences must have an enclosed garage with a garage door.

In two-story residences the ground floor area, exclusive of garages, shall not be less than 1200 square feet, with a total of 1800 square feet of livable floor space. A fully furnished, heated and air-conditioned area of a second floor qualifies as livable floor space.

Such plans may be disapproved because of any of the following:

- (a) failure of such plans or specifications to comply with any of the Restrictions;
- (b) failure to include information in such plans and specifications as may have been reasonably requested;
- (c) objection to the exterior design, appearance or materials of any proposed building or repairs or replacement;
- (d) incompatibility of any proposed building with existing buildings upon other Lots in the vicinity;
- (e) objections to the location of any proposed structure upon any Lot or with reference to other Lots in the vicinity;
- (f) objection to the color scheme, finish, proportions, style of architecture, height, bulk, or appropriateness of any proposed structure.

The following use Restrictions shall also apply to said Lots

- (1) No business, trade or commercial activity of any kind or character may be conducted upon any Lot.

(2) No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot. No pets are to be kept on any Lots except pets kept inside the house.

(3) Owners who live in Winborne Park, Phase One, shall not park boats, motor vehicles, motor driven cycles or recreational vehicles on any street in the subdivision.

(4) No noxious or offensive activity shall be engaged in or carried on upon any Lot, or on said property, nor shall anything be done thereon which may be or become an annoyance, danger or nuisance to the neighborhood.

(5) No sign of any kind shall be displayed in public view on any Lot except one professional sign of not more than five (5) square feet advertising the property for sale or rent.

ARTICLE VII

GENERAL PROVISIONS

Section 1. Enforcement. The Association, 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 way effect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded.

Section 4. Option of Association to Purchase. In the event

Office of the State Auditor, Auditorial Council, State of Ohio

the dwelling on any Lot is wholly or partially destroyed by fire, flood, act of God or any other cause or casualty and the Owner thereof does not rebuild or restore the same to like good order and condition as existed prior to such total or partial destruction within six (6) months of such destruction, then the Association shall have the right, privilege and option to purchase such Lot at the fair market value thereof as fixed and determined by the average of three appraisals in writing, one by each of three licensed real estate brokers or appraisers licensed to do business in Lauderdale County, Alabama.

IN WITNESS WHEREOF, the undersigned, W.M.C. Construction, Inc., a Corporation, being the Declarant herein, First Southern Bank, being mortgagee, and Laura Jill Farris, who is the owner of Lot 25, Winborne Park, Phase One, whose husband is Randall K. Farris, have hereunto set their hands and seals this the 20TH day of APRIL, 1999.

W.M.C. Construction, Inc.
A Corporation

BY: [Signature]
Its President

ATTEST:

FIRST SOUTHERN BANK
A Banking Corporation

BY: [Signature]
THOMAS N. WARD
EVP/COO

ATTEST:

[Signature]
ASST. CORP. SECRETARY

[Signature]
Laura Jill Farris

[Signature]
Randall K. Farris

STATE OF ALABAMA *
*
LAUDERDALE COUNTY *

I, the undersigned authority, a Notary Public, in and for said State and County aforesaid, hereby certify that William M. Coussons, whose name as President of W.M.C. Construction, Inc., a Corporation, is signed to the foregoing Declaration, 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.

