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Tuscaloosa County, Alabama

STATE OF ALABAMA

COUNTY OF TUSCALOOSA

**RESTRICTIVE COVENANTS AND EASEMENTS OF
THE VILLAGE AT MAGNOLIA**

KNOW ALL MEN BY THESE PRESENTS that the undersigned, BBP II, L.L.C., an Alabama limited liability company, (herein the "Declarant"), is the owner of certain property upon which it intends to develop a residential subdivision known as THE VILLAGE AT MAGNOLIA (the "Subdivision"), a map or plat of the First Section of which is recorded in Plat Book 2000, at Pages 191-192 in the Probate Office of Tuscaloosa County, Alabama; and

WHEREAS, it is the intention and desire of the Declarant to develop the Subdivision as an exclusive residential subdivision; and

WHEREAS, for and in consideration of the enhancement of the value of said property, the Declarant does hereby restrict the lots in the Subdivision by placing against each and every lot and any common area designated therein the restrictions and easements hereinafter set out and the Declarant covenants and agrees to be bound by all of the covenants, easements and restrictions hereinafter set forth and that all future deeds, covenants, rights of way, easements and other transfers of title shall be made subject to said restrictions, easements and covenants as hereinafter set out, to-wit:

1. **USE.** No lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any building lot other than a single family dwelling.
2. **SIZE REQUIREMENTS.** The habitable floor area of the main residential structure on any lot in the first section of the Subdivision, exclusive of basements, porches, patios and garages, shall be not less than one thousand three hundred fifty (1,350) square feet. Said size requirements for the remaining section of the Subdivision shall be a minimum of One Thousand (1,000) square feet unless a larger size is mandated by the Declarant when additional sections are annexed into the Subdivision.
3. **BUILDING LOCATION.** No building shall be located nearer to any street than the set back lines shown on the recorded plat. All buildings shall face the minimum building set back

line as shown on the recorded plat of the Subdivision. For the purpose of this declaration, eaves, steps, open porches and terraces at ground level shall not be construed as a part of the building; provided, however, that this shall not be construed to permit encroachments, except as otherwise specifically provided herein, upon another lot.

4. MINIMUM LOT SIZE. No lot shall be re-subdivided into lots that are smaller in area than the smallest lot in the original subdivision of the lots. For the purpose of this paragraph the word "re-subdivided" shall include any splitting or selling off of any part of a platted lot by metes and bounds. Each lot shall be conveyed as a separately designated and legally described freehold estate, subject to the terms, covenants, conditions, easements, and provisions hereof. Notwithstanding anything provided to the contrary in this Declaration, Declarant may at any time or from time to time divide and redivide, combine and resubdivide any lots owned by Declarant.

5. NUISANCE. No immoral, improper, offensive or unlawful use shall be made of any lot. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood, or unreasonably disturb the occupant of any dwelling in the Subdivision, which prohibited activities shall include, but not be limited to, loud music or noise from radios, televisions, stereos, musical instruments, etc.

6. TEMPORARY RESIDENCE. No structure of a temporary character, trailer, tent, shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence either temporarily or permanently; provided, however, that Declarant, or its assigns, may maintain a temporary structure as a sales office during the sales period.

7. ANIMALS. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats and other household pets of a peaceful demeanor may be kept on any lot, provided they are not kept, bred or maintained for any commercial purposes, or in numbers so as to be a nuisance to the neighborhood. No such animals shall be objectionable in sight or smell, and the owner shall not permit an animal to cause an unsanitary condition to exist.

8. RUBBISH. No lot shall allow accumulation of, or be used or maintained as a dumping ground for, rubbish, trash, garbage or other waste accumulated through normal residential use and the same shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. No house trailer, camper, boat trailer, dune buggy, non-operable vehicle, tractor trailer, nor any other type temporary use vehicle, except a family type automobile, shall be parked or maintained on any permanent type basis on the right of way or in the front or rear of any lot.

9. DURATION OF RESTRICTIVE COVENANTS. Except where permanent easements are hereby created, these covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of thirty (30) years from this date. These covenants will be automatically extended for successive periods of ten (10) years unless an instrument, in writing, signed by the owners of at least ninety percent (90%) of the lots in the Subdivision has been recorded, agreeing to change said covenants in whole or in part.

10. VIOLATION OF RESTRICTIONS. If any party hereto, or its heirs, successors or assigns, shall violate or attempt to violate any of the covenants herein, it shall be lawful for any other person owning any real property situated in the Subdivision and/or the Homeowner's Association for the Subdivision to prosecute any proceedings at law or 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 by injunctive relief or to recover damages for such violation. It is provided, however, that no violation shall ever work a reversion or forfeiture of title.

11. ARCHITECTURAL CONTROL COMMITTEE. No building, fence, or growing hedge row shall be erected, placed or altered on any lot until the construction plans and specifications therefor, as well as a plan showing the location of the structure, have been approved by the Architectural Control Committee as to quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finished grade elevation. No fence or wall shall be erected, placed or altered on any lot and no change in the

exterior color, material, or design of any building, including the ~~1995-02-08 by Angelika Kuntz~~, shall be made unless similarly approved. There shall not be any structure erected or built upon any lot, nor shall any structure existing be altered, remodeled, added to, or changed so as to effect the exterior thereof unless similarly approved by the Architectural Control Committee.

The Architectural Control Committee shall be composed of ROBERT BUCHALTER, WILLIAM H. BOYD, and S. LEE PAKE, and any other person or persons selected by them. 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 member of the Committee, nor its designated representative, shall be entitled to any compensation for services performed pursuant to this covenant. At any time after the Declarant has divested itself of the ownership of all of said lots, the then record owners of a majority of the lots shall have the power through a duly recorded written instrument to change the membership of the Committee or to withdraw from the Committee or restore to it any of its powers and duties.

The Committee's approval or disapproval as required in these covenants shall be in writing. In the event that the Committee, or its designated representative, fails to approve or disapprove within thirty (30) days after plans and specifications have been submitted to it, or, in any event, when no suit to enjoin the construction has been commenced prior to the completion of a building or dwelling thereon, approval will not be required and the related covenants and restrictions shall be deemed to have been fully complied with.

12. SIGNS. Until the termination of the Declarant's control period of The Village at Magnolia Homeowners Association, Inc., referred to in paragraph 27 hereof (and as specified in its By-Laws), no "for sale" sign, other than that of the Declarant, and/or the builder of the dwelling on such lot shall be displayed to the public view on any lot; provided, however, that parties other than the Declarant and the original home builder who wish to sell dwellings in the Subdivision may display one (1) "for sale" sign of up to three (3) square feet in the front window of such dwelling. After the termination of the Declarant Control Period, any property owner may place a "for sale" sign in the front yard provided such sign does not exceed three (3) square feet. No business activities of any kind whatsoever shall be conducted in any building or on any portion of any building on any lot; provided, however, that the foregoing shall not apply to the business activities, signs, and billboards, or the construction and maintenance of the buildings, if any, by Declarant, its agents and assigns, during the course of construction and the initial sales period.

13. MINING AND DRILLING. No oil or gas drilling, oil or gas development operations, oil or gas refining, quarrying or mining operations of any kind shall be permitted upon or in any lot, nor shall oil wells, gas wells, tunnels, tanks, mineral excavations or shafts be permitted upon or in any lot. No derrick or other structure designated for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.

14. UTILITY AND DRAINAGE BASEMENTS. Easements for installation and maintenance of utilities and drainage facilities are reserved and created as shown on the plat. There is hereby reserved, created and granted a blanket easement upon, across, over and under all of the areas upon which buildings and structures are not erected for members of the Architectural Control Committee, the Board of Directors of the Association, parties in privity with the members of said Committee and Board, and invitees, servants or employees of said Committee and Board, for the purpose of cutting grass, trimming shrubbery, pruning, edging, fertilizing, watering or otherwise caring for the lawn or other plated area and for the purpose of removing garbage, trash, rubbish or any of the things prohibited by paragraph 8 hereof. There is hereby reserved, created and granted a blanket easement upon, across, over and under all of the areas upon which buildings and structures are not erected for general surface and underground drainage, and all utility companies for providing necessary utilities to any dwelling situated on any lot, for ingress, egress, installation, replacing, repairing and maintaining the same, including but not limited to water, garbage, sewers, gas, telephone, electricity and television transmission systems, and by virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary poles, wires and other necessary equipment and appliances on said property and to affix and maintain electrical and/or telephone wire, circuits, and conduits on, above, across and under the roofs and

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exterior walls of dwellings erected thereon. An easement is granted to all police, fire protection, ambulance and similar persons to enter upon all non-closed areas in the performance of their duties. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines or other utilities may be installed or relocated on said property except as initially provided and approved by the Declarant, or after all of the dwellings have been erected and sold by the Declarant, then by the permission of the individual lot owners affected by such installation or relocation and with the approval of the Architectural Control Committee. In the event any utility company furnishing a service covered by the general easement herein provided shall request a specific easement by separate recordable document, the owner of such lot, after obtaining the approval of the Declarant and the Architectural Control Committee as described above, shall have the right to grant such easement and it is further stipulated that the easements provided herein shall in no way affect any other recorded easement on said premises.

15. **SIDEYARD EASEMENTS.** A Sideyard Easement shall serve each dwelling. The Sideyard Easement shall be on the adjoining lot. The Sideyard Easement shall be between the side lot line and the adjoining dwelling not to exceed three (3) feet in width and shall extend the length of the side lot line from the front of the lot to the rear wall of the dwelling; provided, however, that the Sideyard Easement in the front of a lot shall not extend into the parking pad or driveway of the adjacent lot as originally located by the Declarant.

The Sideyard Easement serving an adjacent dwelling shall be known as the Dominant Estate. The lot across which the Sideyard Easement lies shall be known as the Servient Estate.

The Sideyard Easement shall be used for maintenance and repair purposes by the owner of the Dominant Estate, and neither the whole or any part thereof, nor any right to use and enjoy the whole or any part thereof, shall be sold, mortgaged, leased, rented or otherwise granted and conveyed separate and apart from the Dominant Estate.

The owner of the Dominant Estate shall not:

- (a) permit eaves, siding, lighting fixtures, gutters, overhangs, dryer vents or air conditioning condenser lines of the dwelling on the Dominant Estate to extend into the Sideyard Easement;
- (b) suffer or permit any waste upon the Sideyard Easement;
- (c) undertake any use of or affix any object to any wall, fence or other structure on the Servient Estate which abuts, adjoins or crosses the Sideyard Easement;
- (d) undertake any grading that would tend to prevent proper drainage of the Sideyard Easement, or to promote soil erosion or to undermine support for the foundation of any wall, fence or other structure on the Servient Estate which abuts or adjoins the Sideyard Easement;
- (e) place or permit the accumulation of any soil or fill material against any wall, fence or other structure on the Servient Estate which abuts adjoins or crosses the Sideyard Easement to a height which exceeds original grade;
- (f) cause, suffer or permit any damage to any utility lines located within the Sideyard Easement or interrupt or interfere with the maintenance and repair thereof;
- (g) construct, erect or install any structure upon, across, over, under or within the Sideyard Easement or undertake any grading or fill or any other activity upon the Sideyard Easement which is in violation of, or which would result in a violation of, any applicable governmental statute, ordinance, rule or regulation.

There shall be reserved to the owner of the Dominant Estate with the respect to the Sideyard Easement the right to:

(a) enter upon the Sideyard Easement at reasonable times and under reasonable circumstances for the purpose of constructing, reconstructing, maintaining and repairing any connecting fence, wall or other structure on the Dominant Estate which abuts, adjoins or crosses the Sideyard Easement;

(b) permit reasonable drainage of water and other emissions from the Dominant Estate over, upon and across the Sideyard Easement;

(c) in exercising the right of entry upon the Sideyard Easement as provided for above, the owner of the Dominant Estate agrees to utilize reasonable care not to damage any landscaping or other items existing in the easement area; provided, however, that the owner of the Dominant Estate shall not be responsible for damage to such landscaping or other items to the extent such damage could not be reasonably avoided in connection with such entry upon the easement area for authorized purposes and shall not be liable for damage to structures if they are built upon the easement so as to unreasonably interfere with repairs, maintenance or reconstruction of the wall, fence or the dwelling on the lot having the Dominant Estate.

The owner of the Servient Estate may use the Sideyard Easement for the purposes of planting, landscaping, installation and use of general landscape type structures, including such structures as benches, walks, patios, decks, fences or trellises, general recreation, access, drainage, and other visual, aesthetic and recreational purposes, and it shall be maintained by the owner of the Servient Estate. The owner of the Servient Estate further shall maintain the landscaping on any land lying in the Sideyard Easement.

The owner of the Servient Estate shall not:

(a) place any structures on the Sideyard Easement in such a manner or such a location that the structure would unreasonably interfere with repair, maintenance or reconstruction of any wall, fence or the dwelling on the lot having the Dominant Estate. If the structure does interfere, the owner of the Dominant Estate will not be liable for any damage to a structure which is done in the course of repair, maintenance or reconstruction work done by the Dominant Estate.

(b) permit trees, shrubbery or other vegetation to grow on the Sideyard Easement which would cause damage to or interfere with the maintenance and repair of any wall, fence or the dwelling on the Dominant Estate;

(c) cause or permit any offensive contact (including without limitation thereto, any pounding or bouncing of objects) with any wall of the residence on the Dominant Estate which abuts, adjoins or crosses the Sideyard Easement;

(d) suffer or permit upon the Sideyard Easement any activities by household pets or other animals which would tend to cause damage to, or undermine support for, any wall, fence or other structure on the Dominant Estate which abuts or adjoins the Sideyard Easement;

(e) cause or permit to exist any open, uncontained fire, or the storage of any combustible material, on the Sideyard Easement;

(f) construct, erect or install any structure upon, across, over, under or within the Sideyard Easement or undertake any grading or fill or any other activity upon the Sideyard Easement which is in violation of, or which would result in a violation of, any applicable governmental statute, ordinance, rule or regulation.

Except for a window which may be located by the Declarant at least six (6) feet above the finished floor level of the residence on the Dominant Estate, the owner of the Dominant Estate shall not construct, install or otherwise cause to be made any door or window in the residence on the Dominant Estate which abuts or adjoins the Sideyard Easement.

Notwithstanding anything contained in this Paragraph to the contrary, the Servient Estate owner may construct a privacy fence and/or gate in the Sideyard Easement and any damage caused

thereto by the Dominant Estate owner or its invitees, licensees, or contractors shall be promptly repaired by the Dominant Estate owner.

In the event of any dispute arising concerning the rights and obligations created by this Section, the owner of the Servient Estate and the owner of the Dominant Estate shall each choose one (1) arbitrator, who shall choose a third arbitrator, and the decision of a majority of all the arbitrators shall be binding upon such owners.

16. GARAGES. Each dwelling in the first section of the Subdivision shall have a garage large enough to house at least one (1) automobile; provided, however, that this one-car garage requirement may not be applicable to future sections of the Subdivision, such decision to be evidenced in when such future sections are annexed by the Declarant.

17. PRIVACY FENCE. In the event a dwelling is destroyed or moved, or for any other reason does not provide a privacy wall along its zero setback line, the owner of that lot shall construct a six (6) foot high solid fence of the same style as the front fence connecting the homes along the zero setback line where the dwelling wall was formerly located, within seven (7) days.

17. SIGHT LINES. No fence, wall, hedge or shrub planting with sight lines at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street boundary lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines or in the event of a rounded property corner, from the intersection of the street boundary lines extended.

The same line limitations shall apply on any lot within ten (10) feet from the intersection of a street boundary line with the edge of a drive-way or alley pavement. No tree shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

This covenant shall not apply to the original construction of a fence, wall, hedge or shrub planting by the Declarant nor shall it apply to any subsequent owner merely maintaining such original fence, wall, tree, hedge or shrub planting; it being the intention of the Declarant to prohibit interference with sight lines as described herein and not taken into consideration in the original development contemplated.

18. CONFLICT WITH ZONING ORDINANCE. Any part of these covenants that is in conflict with the Zoning Ordinance of the City of Tuscaloosa, Alabama, as to minimum requirements shall be invalid to the degree that they are in conflict with such ordinance; however, the parts of these covenants which restrict buildings or other requirements further or more strictly, shall control in lieu of the Zoning Ordinance. The invalidation of any part of these covenants by the said Zoning Ordinance shall not invalidate any other requirements contained herein.

19. EXTERIOR FINISH. No building which replaces a building that is part of the original development shall be completed on any lot with an exterior finish of asbestos or roll composition. The decision of the Architectural Control Committee shall be final in event of a dispute as to what constitutes "false or imitation exterior finish."

20. PAINTING. Each lot owner shall, from time to time, paint and otherwise maintain the exterior of his dwelling unit (including fencing) 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 matter, color or design as to disrupt the harmonious blending of the original architectural plan of the dwelling units. The decision of the Architectural Control Committee shall be final in the event of a dispute as to whether the exterior of a dwelling unit "needs" painting and/or maintenance.

21. ANTENNAE. There shall be no exterior radio, television, electronic antennae, or any signal receiving device of any kind, erected or placed upon any building or lot (except a satellite dish antenna which may be located in the rear yard but out of view from the street), nor shall any property owner allow the operation of any radio, television, or other electronic device which

interferes in any manner with the reception or transmission of electronic signals of any kind by any other lot or the owner or occupant thereof.

22. STORAGE. There shall be no storing or keeping of firewood, lawn care equipment (including water hoses), bicycles, off-road motorcycles, trash containers or any similar equipment or substances in the front or outside the fence on the side of any dwelling or lot. Also, all garage doors shall remain closed at all times, except when the garages are in use for entry or exit of vehicles, cleaning, repairing, or the like. Provided, however, that the Architectural Control Committee may waive this rule when, in its sole opinion, such waiver will not substantially impair the aesthetics of the Subdivision. The Architectural Control Committee's decision in this regard shall be final and binding as if set forth herein.

23. AUTOMOBILES. All automobiles are to be kept and parked only in the garage or on the driveway of a lot, and not on the street. At least two (2) off-street parking spaces shall be provided on each lot. No lot owner shall make any modification to the garage or the driveway of a lot which would eliminate a parking space.

Any motor home shall be kept and parked only in the garage or another enclosed structure as shall be approved by the Architectural Control Committee.

24. MISCELLANEOUS STRUCTURES. There shall not be any installation or placing of any storage unit, workshop, playground equipment (such as swings, swing sets, monkey bars, or gymnastics equipment), windmills, bird baths, bird houses, playhouses, similar structures, or any other decorative structures upon any lot without the prior written approval of the Architectural Control Committee.

25. LAWN CARE. The mowing and maintenance of the front lawns of the lots in the Subdivision shall be the responsibility of each lot owner. The lawn and shrubbery on each lot shall be kept in a reasonably well manicured condition so as not to detract from the overall appearance of the lot and Subdivision. If the Architectural Control Committee should determine that an owner is in violation of this provision, or the provisions contained in paragraphs 8 and 20, the Architectural Control Committee shall give at least five (5) days written notice to the owner of the lot to remedy the condition. If the condition is not remedied by the owner of the lot by the end of said five (5) day period, the Architectural Control Committee shall cause the said care and maintenance to be satisfactorily completed at the expense of the owner of said lot. The owner of the nonconforming lot shall be liable for the expenses incurred by the Architectural Control Committee in completing the care and maintenance. Notwithstanding any provision contained in this paragraph to the contrary, the Association (as defined in paragraph 27 below) may by a 2/3 or greater vote of its members modify this provision to provide for the upkeep of all front lawns in the Subdivision by the Association with an appropriate assessment increase to cover such additional expense.

26. FENCES. When a dwelling is constructed on a lot in the Subdivision, the owner of such lot shall construct a six (6) foot high privacy fence similar in design to other privacy fences in the Subdivision that meets the approval of the Architectural Control Committee. Such fence shall be located along the side and rear lot lines and shall not extend any closer than six (6) feet toward the front of the dwelling. All fences installed upon a lot by the Declarant shall be owned by the owner of the said lot. The owner shall be responsible for insuring, keeping, and maintaining in good repair that portion of said fence located upon the owner's lot; provided, however, that the exterior of any fence located at the front entrance of the Subdivision shall be maintained in good repair by the Association described in paragraph 27. Any fence deemed by the Architectural Control Committee to need repair shall be repaired within thirty (30) days from the owner's receipt of notice of such needed repair. If such repairs are not satisfactorily made within said thirty (30) days, then the Architectural Control Committee shall cause the repairs to be made at the said lot owner's expense. Fences or walls erected at the rear yards shall not be higher than six (6) feet, unless erected by the Declarant or unless approved by the Architectural Control Committee. No fences or walls shall be permitted in the front yards except such fences or walls used for privacy, security, decorating or ornamental purposes as installed by the Declarant. Any fence connecting homes which were originally erected by the Declarant for side yard or rear yard privacy shall not be removed, destroyed or materially altered, and shall be maintained in good condition and repair by

the owner. Fences must be constructed to permit reasonable access to the lot, or they must have gates to allow access. Fencing added after initial construction of a dwelling must conform to the same style as that of the connecting fences at the time of construction and must be approved by the Architectural Control Committee.

27. NEIGHBORHOOD ASSOCIATION. The Declarant has caused THE VILLAGE AT MAGNOLIA HOMEOWNERS ASSOCIATION, INC. (hereinafter the "Association") to be formed. The Articles of Incorporation of the Association and its By-Laws are filed in the Probate Office of Tuscaloosa County, Alabama in Incorporation Book ~~222~~ at Page 3179

The title to each lot in THE VILLAGE AT MAGNOLIA carries with it the right to cast one (1) vote, on the basis of one (1) vote per one (1) lot, at any regularly or specially called meeting of the members of the Association; provided, however, that the Declarant shall own all votes during the Declarant Control Period and shall hold a weighted 3 to 1 vote during the Declarant Weighted Vote Period as more particularly set forth in the By-Laws of the Association. Membership in the Association shall be appurtenant to and may not be separated from ownership of lots in the Subdivision.

It is anticipated that THE VILLAGE AT MAGNOLIA may contain certain common areas, that the streets may have medians containing signage, street lights, a water sprinkling system, shrubs, trees, bushes and other landscaping, and that walls or fences may be constructed at the entrance of the Subdivision. Each owner of a lot in the Subdivision shall have the nonexclusive right to use and enjoy the Common Areas of the Subdivision subject to the temporary suspension by the Board of the Subdivision from the use of such Common Areas of up to sixty (60) days for the violation of any rule established by the Board of the Association for the Common Areas. Such suspension may also be levied by the Board for non-payment of assessments, but shall be automatically restored upon full payment thereof.

The care and upkeep of the exterior of any walls and fence located at the entrance of the Subdivision, any street medians, and any other common areas in the Subdivision, as well as the payment of all utility bills associated with the signage, the common area, any street lights or water sprinkling systems, shall be the responsibility of the Association and shall be governed by the Articles of Incorporation and By-Laws of the Association.

28. RESERVATION OF RIGHT OF MERGER AND ANNEXATION. For a period of thirty (30) years from the date of the recordation of this Declaration, the Declarant reserves the right, power and authority, as allowed by law, to annex the real property owned by it and located next to the Subdivision for the purpose of establishing, annexing and merging one or more additional phases of THE VILLAGE AT MAGNOLIA development. The phases may be created simultaneously or staggered, and shall conform in basic respects to the general restrictions, limitations and benefits contained in this Declaration; provided, however, that the Declarant shall have the right to make limited modifications to these Restrictive Covenants for future phases of the Subdivision. The Declarant shall have the right to name various sections or phases of the Subdivision by names other than The Village at Magnolia, but notwithstanding such differing names, all such additional sections and phases that are annexed and merged into The Village at Magnolia shall nonetheless be considered part of the Subdivision. Upon the recordation of the Declaration of Annexation and Merger in compliance with this section, this Declaration shall further apply and effect all the property described in this Declaration and the property described in such Declaration of Annexation and Merger, and shall also bind all Owners of any part of the subsequent phases with the same effect as if the phases were originally subject to and described in this Declaration. Thereafter, the powers and responsibilities of the Association shall be coextensive with regard to all property included within the expanded THE VILLAGE AT MAGNOLIA development and the Association shall, pursuant to the provisions of this Declaration, constitute the Association for the entire THE VILLAGE AT MAGNOLIA development, as expanded. The rights, obligations and duties of each Owner shall be the same and identical to the rights, obligations and duties prior to recordation of such Declaration of Annexation and Merger. The assessments and voting rights will become effective for the annexed lots of the additional phases upon recordation of the Declaration of Annexation and Merger.

29. ENCROACHMENT EASEMENT. It is anticipated that the Declarant, or its assigns, will construct dwellings and fences near the lot line of each lot. Because of human error that may occur in staking out such dwelling near the lot line, the possibility that a Minor Encroachment (as hereinafter defined) may occur by reason of the fence or dwelling structure extending over the boundary line of the lot onto the adjacent lot, an easement is hereby reserved in favor of the Declarant, and its assigns, to maintain such dwelling upon such adjoining lot when a Minor Encroachment occurs. Such easement shall run with the land so long as the dwelling structure exists and shall terminate upon the destruction of or the removal of such dwelling from the easement area. For the purpose of this provision, "minor encroachment" shall mean any encroachment of the dwelling structure which extends across the lot line for the lot upon which said dwelling is constructed into the adjacent lot for a distance of not more than 12 (twelve) inches.

30. MISCELLANEOUS. The Declarant reserves for itself (so long as it is the owner of said real property or the real property located next to it), and its successors and assigns, the right to waive violation of these restrictions by written instrument upon its determination that the violation waived is minor, does not adversely affect the value, utility or enjoyment of any other lot in the Subdivision, and does not constitute a material hazard to anyone, including the construction of dwellings in future phases of THE VILLAGE AT MAGNOLIA development.

31. INCORPORATION BY REFERENCE ON RESALE. In the event any owner sells or otherwise transfers his lot, any deed purporting to effect such transfer shall contain a provision incorporating by reference the covenants, restrictions, easements, charges and liens set forth in this Declaration.

32. SEVERABILITY. Invalidation of any one of these covenants or restrictions by judgment, decree or order shall in no way affect any other provision hereof, each of which shall remain in full force and effect.

33. CAPTIONS AND GENDER. The captions of this instrument are intended for convenience only and shall not alter, enlarge, modify or otherwise affect the provisions hereof. Wherever the context so requires, all references to the singular shall include the plural and all references to the masculine gender shall include the feminine and, in both instances, vice versa.

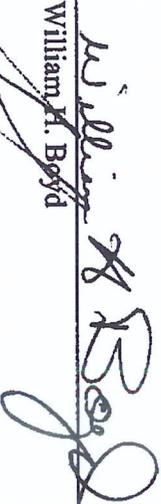
IN WITNESS WHEREOF, the said BBP II, L.L.C., an Alabama limited liability company, has on the 27th day of December, 2000, caused these presents to be executed by Robert Buchalter, Aubrey Buchalter, William H. Boyd, and S. Dee Pake, its Members.

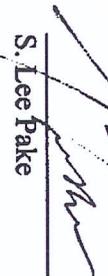


Aubrey Buchalter



Robert Buchalter



William H. Boyd


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