

PHASE III

REC- # 55 00  
1000  
FILED  
IT WAS  
RECORDED ON

STATE OF ALABAMA :  
COUNTY OF BALDWIN:

MAY 13 10 50 AM '94

REC- 708

SUBSEQUENT AMENDMENT AND  
SUPPLEMENTARY DECLARATION OF  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR ROCK CREEK, A PLANNED UNIT DEVELOPMENT

This AMENDMENT made this 13 day of MAY, 1994, by  
H/M PARTNERS, L.L.C., a Limited Liability Company, (the  
"DECLARANT"), for itself, its successors, its grantees and assigns.

R E C I T A L S :

1. H/M PARTNERS, an Alabama General Partnership,  
("PARTNERSHIP") did subdivide certain real property located in  
Baldwin County, Alabama, which is known as Lots 1-174 and the  
common areas designated as COMMON AREA 1 through COMMON AREA 13 on  
the plat of ROCK CREEK, PHASE ONE, as per plat thereof recorded in  
Slide 1395-B, 1396-A, and 1396-B ("PHASE ONE PLAT") and subjected  
said property to that certain Declaration of Covenants, Conditions,  
and Restrictions, dated the 5th day of May, 1993, and recorded in  
Miscellaneous Book 74, Pages 433-487 ("DECLARATION").

2. An ASSOCIATION of owners for the operation of the  
Subdivision was formed under the Laws of the State of Alabama,  
known as ROCK CREEK PROPERTY OWNERS ASSOCIATION, INC.,  
("ASSOCIATION").

3. The PARTNERSHIP did amend the DECLARATION and add  
additional real property to ROCK CREEK, a Subdivision, which real  
property is described as Lots 175-231 and the area designated as  
COMMON AREA 14 on the plat of ROCK CREEK, PHASE TWO, recorded in  
Slide 1442-B through 1443-B ("PHASE TWO PLAT"), and did amend the  
DECLARATION by Subsequent Amendment and Supplementary Declaration  
recorded on November 16, 1993, in Miscellaneous Book 75, Page 1847.

4. DECLARANT is the successor in interest to the  
PARTNERSHIP.

5. The DECLARANT desires to add the real property described  
as Lots 232 through 256 and Lots 284 through 333 and the area  
designated as COMMON AREA 15 and COMMON AREA 16 and COMMON AREA 17

MISCELLANEOUS BOOK 74 PAGE 433

on the plat of ROCK CREEK, PHASE THREE, recorded in Slides 1480B & 14  
("PHASE THREE PLAT") to the DECLARATION by incorporating the same  
into the DECLARATION, the same as if the real property described  
above and referred to as the PHASE THREE PLAT had been originally  
included therein, all in accordance with ARTICLE XVI of the  
DECLARATION. Only the property described in the preceding sentence  
and not all of the property described on the Plat of ROCK CREEK,  
PHASE THREE, is subjected to this SUBSEQUENT AMENDMENT. Lots 257  
through 283 as shown on the Plat of ROCK CREEK, PHASE THREE, are  
not subjected to the provisions of this SUBSEQUENT AMENDMENT.

6. ARTICLE XVII of the DECLARATION grants to the DECLARANT  
the power to amend unilaterally the DECLARATION. Pursuant to  
ARTICLE XVII, DECLARANT does hereby amend the DECLARATION as herein  
provided.

The recording references referred to herein are to the Office  
of the Judge of Probate of Baldwin County, Alabama.

NOW, THEREFORE, DECLARANT hereby makes the following  
additional Declaration and SUBSEQUENT AMENDMENT as to the use to  
which the real property described above and referred to as the  
PHASE THREE PLAT and the improvements thereon may be put, hereby  
specifying that the DECLARATION, as amended by this Supplemental  
Declaration and Subsequent Amendment, shall be binding upon the  
DECLARANT, its successors and assigns, and all owners of all or any  
part thereof of the real property and improvements described on or  
located on the property described above and referred to as the  
PHASE THREE PLAT together with their grantees, successors, heirs,  
executors, administrators, devisees, or assigns.

A. Increment. As provided in ARTICLE XVI of the  
DECLARATION, the DECLARANT elects to incorporate the real property  
described above and referred to as the PHASE THREE PLAT in ROCK  
CREEK, a Subdivision. The owners of the real property described  
above and referred to as the PHASE THREE PLAT are hereby made  
subject to the DECLARATION. The real property described above and  
referred to as the PHASE THREE PLAT shall be held, sold or conveyed  
subject to the easements, restrictions, covenants and conditions

set out in the DECLARATION and shall run with the real property and be binding on all parties having any right, title or interest in the real property described above and referred to as the PHASE THREE PLAT.

B. Purpose. The purpose of this SUBSEQUENT AMENDMENT is to amend the DECLARATION and to bring the real property described above and referred to as the PHASE THREE PLAT within the scheme and operation of the DECLARATION as provided in ARTICLE XVII and ARTICLE XVI thereof. The operation and effect of the DECLARATION is hereby extended to the real property described above and referred to as the PHASE THREE PLAT.

C. Real Property. The real property owned by the DECLARANT that is herewith submitted to the scheme and operation of the DECLARATION is that certain land, lying and being in the County of Baldwin, State of Alabama, and more particularly described above and referred to as the PHASE THREE PLAT.

D. Adoption. Except as provided in this Paragraph below, and as herein altered and amended, the DECLARATION and every part and provision thereof is in all respects ratified and confirmed and by reference adopted and incorporated herein, the same as if fully set forth herein.

Provided, however, the following minimum dwelling area shall apply:

1. The following shall apply to Lots 284 through 333 ROCK CREEK, PHASE THREE: The ground floor livable area (heated and cooled area) of the main building or structure, exclusive of open porches and garages, shall contain not less than two thousand six hundred (2,600) square feet in the case of a one-story building or structure; or in the case of a one and one-half-story building or structure, the ground floor livable area (heated and cooled area) of the main building or structure, exclusive of open porches and garages, shall contain not less than one thousand six hundred and eighty (1,680) square feet, and a total minimum square footage for all of the living area (heated and cooled area) of the main building or structure shall be not less than two thousand eight hundred (2,800) square feet; or in the case of a two-story building or structure, the ground floor livable area (heated and cooled area) of the main building or structure, exclusive of open porches and garages, shall contain not less than one thousand eight hundred (1,800) square feet, and a total minimum square footage for all of the living area (heated and cooled area) of the main building or structure shall be not less than three thousand (3,000) square feet; or in the case of a two and one-half story building or structure, the ground floor livable area (heated and cooled area) of the main building or structure, exclusive of open porches and garages, shall contain not less than one thousand eight hundred

(1,800) square feet, and a total minimum square footage for all of the living area (heated and cooled area) of the main building or structure shall be not less than three thousand six hundred (3,600) square feet.

2. The following shall apply to Lots 232 through 256: The ground floor livable area (heated and cooled area) of the main building or structure, exclusive of open porches and garages, shall contain not less than two thousand four hundred (2,400) square feet in the case of a one (1) story building or structure; or in the case of a one and one-half (1 1/2) story building or structure, the ground floor livable area (heated and cooled area) of the main building or structure, exclusive of open porches and garages, shall contain not less than one thousand four-hundred forty (1,440) square feet, and a total minimum square footage for all of the living area (heated and cooled area) of the main building or structure shall be not less than two thousand four hundred (2,400) square feet; or in the case of a two (2) story building or structure, the ground floor livable area (heated and cooled area) of the main building or structure, exclusive of open porches and garages, shall contain not less than one thousand six-hundred eighty (1,680) square feet, and a total minimum square footage for all of the living area (heated and cooled area) of the main building or structure shall be not less than two thousand eight hundred (2,800) square feet; or in the case of a two and one-half story building or structure, the ground floor livable area (heated and cooled area) of the main building or structure, exclusive of open porches and garages, shall contain not less than one thousand six hundred (1,600) square feet, and a total minimum square footage for all of the living area (heated and cooled area) of the main building or structure shall be not less than three thousand two hundred (3,200) square feet.

No building or structure shall be constructed, erected, altered, placed, remodeled, reconstructed, added to, or permitted to remain on Lots 256 through 232 and Lots 284 through 333 ROCK CREEK, PHASE THREE, other than a single-family dwelling not to exceed two and one-half (2 1/2) stories and forty-five feet (45') in height above the elevation of the first floor (living area) and (except that an attic or a basement floor under the ground surface shall not be considered a story for this purpose) a privately enclosed garage for not more than two (2) automobiles.

E. Proviso. Provided, however, the common area shown on the PHASE THREE PLAT and designated as COMMON AREA 15 and COMMON AREA 16 and COMMON AREA 17 is not donated nor granted to the public, but is private property to be conveyed by DECLARANT to the ASSOCIATION in accordance with the DECLARATION.

F. Rock Creek Golf and Tennis Club. For the purpose of clarity and not in limitation of any of the terms, conditions and provisions of the DECLARATION, Section 3.10 of the DECLARATION is hereby re-stated:

H/M PARTNERS GOLF CLUB AND COUNTRY CLUB, (herein "GOLF CLUB") is a for-profit business and is established as a private club whose members may or may not be OWNERS within the PLANNED UNIT DEVELOPMENT. No OWNER or occupant of a LOT in the PLANNED UNIT DEVELOPMENT gains any right of membership or right to enter or use the GOLF CLUB, golf course, club house, or related property or facilities of the GOLF CLUB because of ownership or occupancy of a LOT within the PLANNED UNIT DEVELOPMENT.

No representations or warranties have been or are made by the DECLARANT or any other person or entity with regard to the continuing ownership or operation of the GOLF CLUB as same presently exists, and no such representation or warranty shall ever be effective without a written amendment to this DECLARATION executed or joined into by the DECLARANT. The ownership, operation, use, or management of the GOLF CLUB may change at any time, solely at the discretion of H/M PARTNERS.

H/M PARTNERS, its successors and assigns, shall have the right, at the sole discretion of the H/M PARTNERS and without the further consent of any OWNER of any LOT in the PLANNED UNIT DEVELOPMENT or of the ASSOCIATION, to make any present or future use or change of use of any real property, personal property, or facility in the private GOLF CLUB as it deems proper, including, but not limited to, the discontinued or suspended use of the property or any part thereof as a golf course or golf club. The GOLF CLUB is specifically exempted from any and all provisions of this DECLARATION or any supplements or amendments thereto. No LOT OWNER nor the ASSOCIATION will take any action that will interfere with the operation and management of the GOLF CLUB.

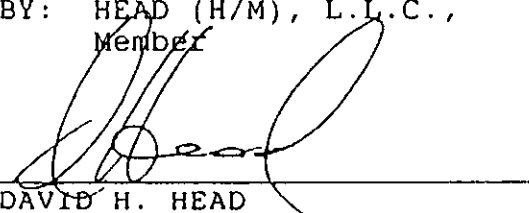
Portions of the REAL PROPERTY owned by H/M PARTNERS as the GOLF CLUB are adjacent to the public road running through the PLANNED UNIT DEVELOPMENT. Members, guests, invitees, stockholders, officers, directors, agents, or employees of the GOLF CLUB shall have the unlimited and unrestricted right of ingress and egress over and across the public road for ingress or egress to the property of the GOLF CLUB. H/M PARTNERS shall have the unrestricted right to regulate the use of and access to its GOLF CLUB property.

IN WITNESS WHEREOF, the DECLARANT has caused this instrument to be executed on the day and year first above referred to.

H/M PARTNERS, L.L.C.,  
An Alabama Limited Liability Company

BY: HEAD (H/M), L.L.C.,  
Member


BY:

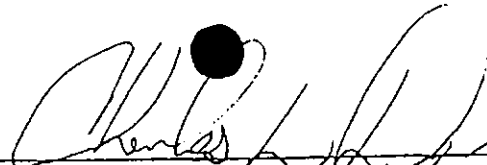
  
DAVID H. HEAD  
Its: Member

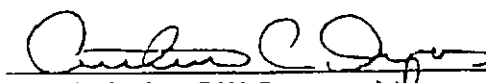
(CORPORATE SEAL)

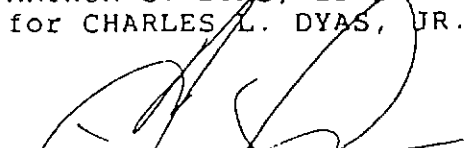
CONSENT

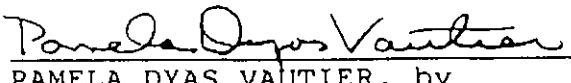
This Supplementary Declaration of Declaration of Covenants, Conditions and Restrictions for ROCK CREEK, is being joined into herein by the undersigned for the purpose of consenting thereto and for the purpose of consenting to the conveyance of the COMMON AREA 15 and COMMON AREA 16 and COMMON AREA 17 shown on the PHASE THREE PLAT from the DECLARANT to the ASSOCIATION.

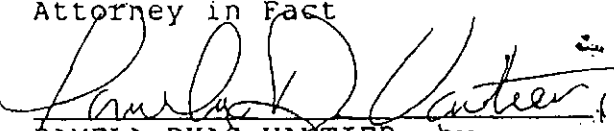
 (SEAL)  
CHARLES L. DYAS, JR., by  
ARTHUR C. DYAS, his  
Attorney in fact


  
\_\_\_\_\_  
(SEAL)  
CHARLES L. DYAS, JR., by  
CRAIG F. DYAS, his  
Attorney in Fact

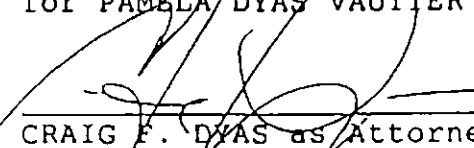
  
\_\_\_\_\_  
ARTHUR C. DYAS, as Attorney in Fact  
for CHARLES L. DYAS, JR.

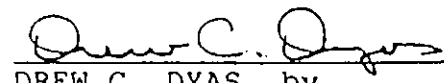
  
\_\_\_\_\_  
CRAIG F. DYAS as Attorney in Fact  
for CHARLES L. DYAS, JR.

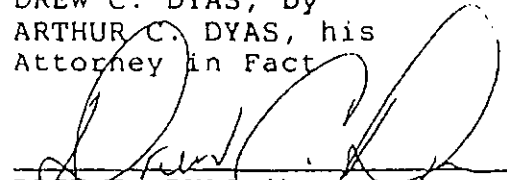
  
\_\_\_\_\_  
(SEAL)  
PAMELA DYAS VAUTIER, by  
ARTHUR C. DYAS, her  
Attorney in Fact


  
\_\_\_\_\_  
(SEAL)  
PAMELA DYAS VAUTIER, by  
CRAIG F. DYAS, her  
Attorney in Fact

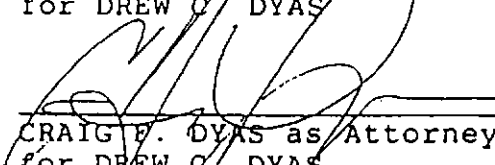
  
\_\_\_\_\_  
ARTHUR C. DYAS as Attorney in Fact  
for PAMELA DYAS VAUTIER

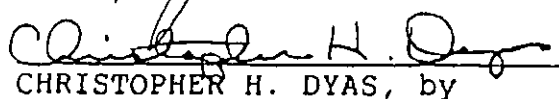
  
\_\_\_\_\_  
CRAIG F. DYAS as Attorney in Fact  
for PAMELA DYAS VAUTIER

  
\_\_\_\_\_  
(SEAL)  
DREW C. DYAS, by  
ARTHUR C. DYAS, his  
Attorney in Fact

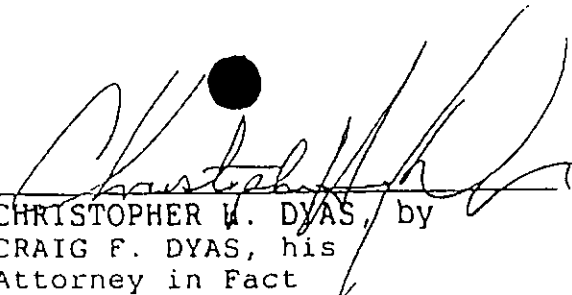
  
\_\_\_\_\_  
(SEAL)  
DREW C. DYAS, by  
CRAIG F. DYAS, his  
Attorney in Fact

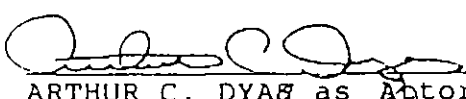
  
\_\_\_\_\_  
ARTHUR C. DYAS as Attorney in Fact  
for DREW C. DYAS

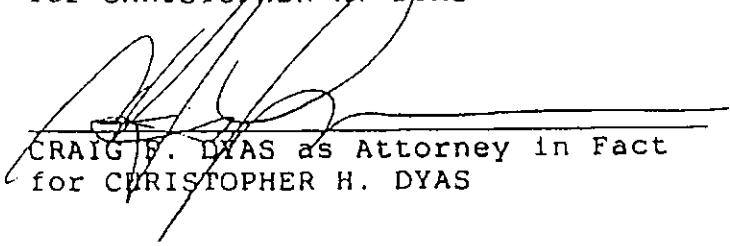
  
\_\_\_\_\_  
CRAIG F. DYAS as Attorney in Fact  
for DREW C. DYAS

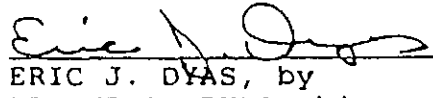
  
\_\_\_\_\_  
(SEAL)  
CHRISTOPHER H. DYAS, by  
ARTHUR C. DYAS, his  
Attorney in Fact

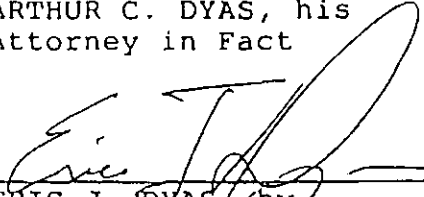
MS:00/S/REG/0394


  
\_\_\_\_\_  
(SEAL)  
CHRISTOPHER W. DYAS, by  
CRAIG F. DYAS, his  
Attorney in Fact

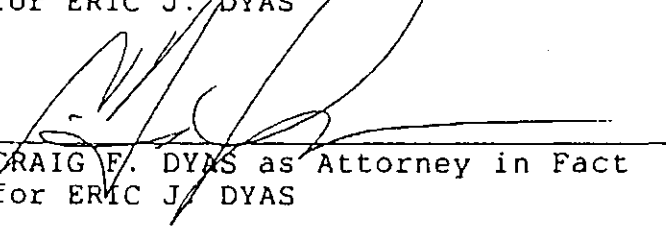
  
\_\_\_\_\_  
ARTHUR C. DYAS as Attorney in Fact  
for CHRISTOPHER H. DYAS


  
\_\_\_\_\_  
CRAIG F. DYAS as Attorney in Fact  
for CHRISTOPHER H. DYAS

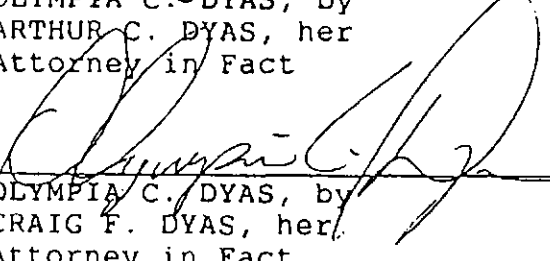
  
\_\_\_\_\_  
(SEAL)  
ERIC J. DYAS, by  
ARTHUR C. DYAS, his  
Attorney in Fact


  
\_\_\_\_\_  
(SEAL)  
ERIC J. DYAS, by  
CRAIG F. DYAS, his  
Attorney in Fact

  
\_\_\_\_\_  
ARTHUR C. DYAS as Attorney in Fact  
for ERIC J. DYAS

  
\_\_\_\_\_  
CRAIG F. DYAS as Attorney in Fact  
for ERIC J. DYAS

  
\_\_\_\_\_  
(SEAL)  
OLYMPIA C. DYAS, by  
ARTHUR C. DYAS, her  
Attorney in Fact

  
\_\_\_\_\_  
(SEAL)  
OLYMPIA C. DYAS, by  
CRAIG F. DYAS, her  
Attorney in Fact

  
\_\_\_\_\_  
ARTHUR C. DYAS as Attorney in Fact  
for OLYMPIA C. DYAS

  
\_\_\_\_\_  
CRAIG F. DYAS as Attorney in Fact  
for OLYMPIA C. DYAS

[Signature] (SEAL)  
ARTHUR C. DYAS

[Signature] (SEAL)  
CRAIG F. DYAS  
FIRST ALABAMA BANK

BY: [Signature]  
Its: VICE PRESIDENT

STATE OF ALABAMA :  
COUNTY OF BALDWIN :

I, the undersigned authority, a Notary Public in and for said State and County, hereby certify that DAVID H. HEAD, whose name as Member of HEAD (H/M), L.L.C. a Member of H/M PARTNERS, L.L.C., an Alabama Limited Liability Company, 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 Partner and with full authority, executed the same voluntarily for and as the act of said Company.

Given under my hand and seal this 13th day of May, 1994.

[Signature]  
NOTARY PUBLIC  
My Commission Expires: 2-10-97



STATE OF ALABAMA :  
COUNTY OF BALDWIN :

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that ARTHUR C. DYAS, whose name as Attorney in Fact for CHARLES L. DYAS, JR., PAMELA DYAS VAUTIER, DREW C. DYAS, CHRISTOPHER H. DYAS, ERIC J. DYAS and OLYMPIA C. DYAS, 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 said instrument he, in his capacity as such Attorney in Fact, executed the same voluntarily on the day the same bears date.

Given under my hand and seal on this 13th day of May, 1994.

[Signature]  
NOTARY PUBLIC  
My Commission Expires: 2-10-97



STATE OF ALABAMA :

COUNTY OF BALDWIN :

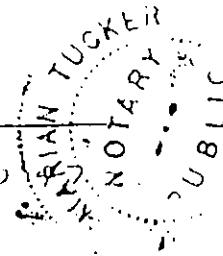
I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that CRAIG F. DYAS, whose name as Attorney in Fact for CHARLES L. DYAS, JR., PAMELA DYAS VAUTIER, DREW C. DYAS, CHRISTOPHER H. DYAS, ERIC J. DYAS and OLYMPIA C. DYAS, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, in his capacity as such Attorney in Fact, executed the same voluntarily on the day the same bears date.

Given under my hand and seal on this 13th day of May, 1994.

Marian Tucker

NOTARY PUBLIC

My Commission Expires: 2-10-95



STATE OF ALABAMA :

COUNTY OF BALDWIN :

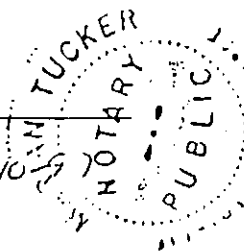
I, the undersigned authority, a Notary Public, in and for said County in said State, hereby certify that ARTHUR C. DYAS, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and seal on this 13th day of May, 1994.

Marian Tucker

NOTARY PUBLIC

My Commission Expires: 2-10-95



STATE OF ALABAMA :

COUNTY OF BALDWIN :

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that CRAIG F. DYAS, whose name 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 said instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and seal on this 13th day of May, 1994.

Marian Tucker

NOTARY PUBLIC

My Commission Expires: 2-10-95

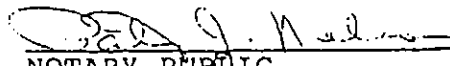


STATE OF ALABAMA :

COUNTY OF BALDWIN :

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Stephen J. Davitt, whose name as Vice President, of FIRST ALABAMA BANK, is signed to the foregoing instrument, and who is know to me, acknowledged before me on this day that he, as such officer, and with full authority, executed the same voluntarily on behalf of said bank.

Given under my hand and seal on this 13<sup>th</sup> day of May, 1994.

  
NOTARY PUBLIC  
My Commission Expires:



THIS INSTRUMENT PREPARED BY:  
Sam W. Irby  
Irby & Heard, P.C.  
Attorneys At Law  
317 Magnolia Avenue  
Fairhope, Alabama 36533  
(205)928-4555

Pud. SWI \ Rock. 03 \ Amend. 03; 94-493