

PHASE IV

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RECORDED BY  
BALDWIN COUNTY  
CLERK OF COURTS  
CENTRAL RECORDS SECTION

STATE OF ALABAMA :  
COUNTY OF BALDWIN:

Dec 15 1 21 PM '95

RECORDED BY  
Dec 86/343  
JUDGE OF PROBATE

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

This AMENDMENT made this 15 day of DECEMBER, 1995, by  
H/M PARTNERS, L.L.C., an Alabama 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 through 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 and amended in Slide 1440-A,  
1440-B and 1441-A ("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 through 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 Planned Unit Development,  
which real property is described as LOTS 175 through 231 and the  
common area designated as COMMON AREA 14 on the plat of ROCK CREEK,  
PHASE TWO, recorded in Slide 1442-B, 1443-A and 1443-B ("PHASE TWO  
PLAT") and did amend the DECLARATION by SUBSEQUENT AMENDMENT AND  
SUPPLEMENTARY DECLARATION OF DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR ROCK CREEK, PHASE FOUR, recorded on November  
16, 1993, in Miscellaneous Book 75, Pages 1847 through 1856 and did  
further amend the DECLARATION by AMENDMENT TO SUBSEQUENT AMENDMENT  
AND SUPPLEMENTARY DECLARATION OF DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR ROCK CREEK, PHASE FOUR, dated

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December 2, 1993 and recorded in Miscellaneous Book 76, Pages 73 through 81.

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

5. The DECLARANT did amend the DECLARATION and add additional real property to ROCK CREEK, a Planned Unit Development, which real property is described as LOTS 232 through 256 and LOTS 284 through 333 and the common areas designated as COMMON AREA 15, COMMON AREA 16 and COMMON AREA 17 on the plat of ROCK CREEK, PHASE THREE, recorded in Slide 1480-B and 1481-A ("PHASE THREE PLAT") and did amend the DECLARATION by SUBSEQUENT AMENDMENT AND SUPPLEMENTARY DECLARATION OF DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR ROCK CREEK, A Planned Unit Development, dated May 13, 1994 and recorded in Miscellaneous Book 78, Pages 389 through 398.

6. The DECLARANT did amend the DECLARATION and add additional real property to ROCK CREEK, a Planned Unit Development, which real property is described as LOTS 257 through 283 on the plat of ROCK CREEK, PHASE THREE, recorded in Slide 1480-B and 1481-A ("LOTS 257 THROUGH 283") and did amend the DECLARATION by SUBSEQUENT AMENDMENT AND SUPPLEMENTARY DECLARATION OF DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR ROCK CREEK, A PLANNED UNIT DEVELOPMENT, dated April 4, 1995 and recorded in Miscellaneous Book 82, Pages 1538 through 1546.

7. The DECLARANT desires to add the real property described as LOTS 334 through 442 and the common area designated as COMMON AREA 18, COMMON AREA 19, COMMON AREA 20, COMMON AREA 21, COMMON AREA 22, COMMON AREA 23, COMMON AREA 24, COMMON AREA 25 and COMMON AREA 26 on the plat of ROCK CREEK, PHASE FOUR, recorded in Slides 1611-B, 1612-A, 1612-B, 1613-A and 1613-B ("PHASE FOUR PLAT") to the DECLARATION by incorporating the same into the DECLARATION, the same as if the real property described above and referred to as PHASE FOUR 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

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described on the PHASE FOUR PLAT is subjected to this SUBSEQUENT AMENDMENT.

8. 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. The terms used herein shall have the same meaning as that contained in the DECLARATION, unless the context otherwise requires.

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 PHASE FOUR PLAT and the improvements thereon may be put, hereby specifying that the DECLARATION, as amended by this SUPPLEMENTAL DECLARATION, 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 FOUR 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 PHASE FOUR PLAT. PHASE FOUR PLAT is hereby subject to the DECLARATION which 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 PHASE FOUR 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 PHASE FOUR 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 PHASE FOUR 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 PHASE FOUR PLAT.

D. ADOPTION. Except as provided 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.

The following covenants and restrictions shall apply only to LOTS 334 THROUGH 353 described on the PHASE FOUR PLAT:

The ASSOCIATION shall maintain the "yard" of each LOT including, but not limited to, cutting and edging grass, weeding flower beds, fertilizing grass and plants as needed, and replacing grass and plants as needed. Need shall be determined by the Directors of the ASSOCIATION. The "yard" is defined as all portions of a LOT lying outside the exterior walls of any structure constructed on the LOT and shall include all landscaping, improvements and decorative and functional appurtenances thereto (not including structures or fences). The ASSOCIATION may also maintain any portion of any right-of-way adjoining a LOT.

In addition to the assessments for COMMON PROPERTY provided for in the DECLARATION, each LOT (i.e., LOTS 334 THROUGH 353) shall be assessed an equal portion of the budgeted cost and/or actual expenses in excess of the budgeted cost for the maintenance provided for in this Paragraph D. The BOARD OF DIRECTORS of the ASSOCIATION shall fix the annual or monthly assessment provided for herein in accordance with the provisions of the DECLARATION. The terms and conditions of the DECLARATION pertaining to covenants for maintenance assessments shall generally apply to the assessments provided for herein. Except by amendments as provided in the DECLARATION, the additional assessments provided for in this Paragraph for the maintenance of the "yard" of LOTS 334 THROUGH 353 shall not be assessed against other OWNERS of LOTS described on the PHASE FOUR PLAT.

In the event that the need for maintenance of a LOT is caused through the willful or negligent acts of its OWNER or through the willful and negligent acts of the family, guest or invitees of the OWNER of the LOT needing such maintenance or repair, the actual cost of such maintenance shall be added to and become part of the assessment to which such LOT is subject.

Some or all of the LOTS may contain "PRIVACY FENCES" (sometimes referred to as "PRIVACY FENCE") running along part or all of the common boundary line between LOTS or within the bounds of a LOT. The PRIVACY FENCES, for the purposes of this DECLARATION are defined as the walls or fences located on or near the LOT lines of the adjoining LOTS of LOTS 334 THROUGH 353. PRIVACY FENCES may be owned jointly by the owners of the LOTS on which the PRIVACY FENCES are located. Except as provided herein, the provisions of ARTICLE XII of the DECLARATION shall apply to PRIVACY FENCES. ARTICLE XII, Section 12.4 of the DECLARATION shall not apply to PRIVACY FENCES.

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 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 two hundred (1,200) 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 one thousand eight hundred fifty (1,850) 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 two hundred (1,200) 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 (2,000) square feet; or in the case of a two and one-half (2 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 five hundred (1,500) 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.

The following covenants and restrictions shall apply only to LOTS 354 through 442 described on the PEASE FOUR PLAT: 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 (2 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 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.

E. 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:

ROCK CREEK 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

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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 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 DECLARANT. The ownership, operation, use or management of the GOLF CLUB may change at any time, solely at the discretion of DECLARANT.

DECLARANT, its successors and assigns, shall have the right, at the sole discretion of DECLARANT 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 DECLARANT 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. DECLARANT 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., an  
Alabama Limited Liability Company  
Its: Member

BY: *[Signature]*  
DAVID H. HEAD  
Its: Member

BY: MAGNOLIA TRACE, INC., an  
Alabama Corporation  
Its: Member

BY: *[Signature]*  
J. M. PHILLIPS  
Its: Vice President of Finance

(CORPORATE SEAL)

BY: ABC ENTERPRISES, LTD., an  
Alabama Limited Partnership  
Its: Member

BY: ABC HOLDINGS, L.L.C., an  
Alabama Limited Liability  
Company  
Its: General Partner

BY: *[Signature]*  
J.M. PHILLIPS  
Its: Authorized Agent

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CONSENT

This SUPPLEMENTARY DECLARATION OF DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR ROCK CREEK, a Planned Unit  
Development, is being joined into herein by the undersigned for the  
purpose of consenting thereto.

AMSOUTH BANK OF ALABAMA

BY: *[Signature]*  
Its: *[Signature]*

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., an Alabama Limited Liability Company, acting in its capacity as 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, DAVID H. HEAD, as Member of HEAD (H/M), L.L.C., an Alabama Limited Liability Company, and with full authority, executed the same voluntarily for and as the act of HEAD (H/M), L.L.C., an Alabama Limited Liability Company, acting in its capacity as Member of H/M PARTNERS, L.L.C., an Alabama Limited Liability Company.

Given under my hand and seal this 15th day of December, 1991.

Maureen Tucker  
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 State and County, hereby certify that J.M. PHILLIPS, whose name as Vice President of Finance of MAGNOLIA TRACE, INC., an Alabama Corporation, acting in its capacity as 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, J.M. PHILLIPS, as Vice President of Finance of MAGNOLIA TRACE, INC., an Alabama Corporation, and with full authority, executed the same voluntarily for and as the act of MAGNOLIA TRACE, INC., an Alabama Corporation, acting in its capacity as Member of H/M PARTNERS, L.L.C., an Alabama Limited Liability Company.

Given under my hand and seal this 14th day of December, 1995.

Cindy A. Ward  
NOTARY PUBLIC  
My Commission Expires: \_\_\_\_\_  
NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
MY COMMISSION EXPIRES: Dec. 17, 1996.  
BONDED THRU NOTARY PUBLIC UNDERWRITERS.

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STATE OF ALABAMA :

COUNTY OF BALDWIN :

I, the undersigned authority, a Notary Public in and for said State and County, hereby certify that J.M. PHILLIPS whose name as Authorized Agent of ABC HOLDINGS, L.L.C., an Alabama Limited Liability Company, acting in its capacity as General Partner of ABC ENTERPRISES, LTD, an Alabama Limited Partnership, acting in its capacity as 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, J.M. PHILLIPS as Authorized Agent of ABC HOLDINGS, L.L.C., an Alabama Limited Liability Company, and with full authority, executed the same voluntarily for and as the act of ABC HOLDINGS, L.L.C., an Alabama Limited Liability Company, acting in its capacity as General Partner of ABC ENTERPRISES, LTD., an Alabama Limited Partnership, acting in its capacity as Member of H/M PARTNERS, L.L.C., an Alabama Limited Liability Company.

1995 Given under my hand and seal this 14<sup>th</sup> day of December.

Cindy A. Ward  
NOTARY PUBLIC  
My Commission Expires 0 0 0  
NOTARY PUBLIC STATE OF ALABAMA  
MY COMMISSION EXPIRES DEC 17 1996  
CONFIDENTIAL NOTARY PUBLIC UNDERWRITERS.

STATE OF ALABAMA :

COUNTY OF Jefferson :

I, the undersigned authority, a Notary Public in and for said State and County, hereby certify that R. SCOTT Pulliam, whose name as officer of AMSOUTH BANK OF ALABAMA, 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, that he, as such officer and with full authority, executed the same voluntarily for and as the act of said Corporation.

Given under my hand and seal this 13<sup>th</sup> day of December, 1995.

Linda L. Vaccarella  
NOTARY PUBLIC  
My Commission Expires 0 0 0  
MY COMMISSION EXPIRES OCTOBER 12 1996

THIS INSTRUMENT PREPARED BY:  
Sam W. Irby  
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