

AMENDMENT PH III

26 1 44 PM '96

BALDWIN COUNTY  
STAFF THIS INSTRUMENT WAS  
PAID TAXES COLLECTED ON

APR 91  
306

STATE OF ALABAMA :  
COUNTY OF BALDWIN:

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

This AMENDMENT made this 5<sup>th</sup> day of NOVEMBER, 1996, 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 and as amended by AMENDMENT AND RATIFICATION OF SUBDIVISION PLAT dated December 14, 1994 and recorded January 11, 1995, in Miscellaneous Book 81, Pages 850 through 851 ("PHASE ONE PLAT") and subjected said property to the terms, conditions, restrictions and provisions of that certain DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF ROCK CREEK, A PLANNED UNIT DEVELOPMENT, PHASE ONE dated May 5, 1993 and recorded on May 11, 1993, 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 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, A PLANNED UNIT DEVELOPMENT dated November 15, 1993 and 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, A PLANNED UNIT DEVELOPMENT dated December 2, 1993 and recorded on December 2, 1993, 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 area designated as COMMON AREA 15 and 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 on May 13, 1994, 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 on April 6, 1995, in Miscellaneous Book 82, Pages 1538 through 1546.

7. 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 334 through 442 and the areas 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") 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 December 15, 1995 and recorded on December 19, 1995, in Miscellaneous Book 86, Pages 343 through 351 ("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.

NOW, THEREFORE, DECLARANT hereby makes the following AMENDMENT as to the use to which the real property described above and referred to as LOTS 334 THROUGH 353 and the improvements thereon may be put, hereby specifying that the DECLARATION and its amendments and the SUBSEQUENT AMENDMENT, as amended by this 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 LOTS 334 THROUGH 353 together with their grantees, successors, heirs, executors, administrators, devisees or assigns.

A. Amendment. Paragraph D. of the SUBSEQUENT AMENDMENT is hereby revised and amended in its entirety and in substitution thereof the following:

The provisions contained in the SUBSEQUENT AMENDMENT pertaining to LOTS 334 THROUGH 353 providing for the maintenance of the "yard" by the ASSOCIATION and for additional assessments are hereby deleted.

Each OWNER of LOTS 334 THROUGH 353 shall keep all LOTS owned by him or her, and all improvements therein or thereon, in a safe, clean and attractive condition and in good order and repair. Such maintenance obligation shall include, without limitation, the following: prompt removal of all litter, trash, refuse and waste; lawn mowing on a regular basis; tree and shrub pruning; watering landscaped areas; keeping improvements, exterior lighting and maintenance facilities in good repair and working order; keeping lawn and garden areas alive, free of weeds and attractive, keeping

driveways in good repair; complying with all governmental health and police requirements; and repair of exterior damage to improvements, all in a manner and with such frequency as is consistent with good property management. If, in the opinion of the ASSOCIATION, any OWNER fails to perform the duties imposed by this paragraph after fifteen (15) days' written notice from the ASSOCIATION to the OWNER to remedy the condition in question, the ASSOCIATION shall have the right, through its agents and employees, to enter upon the LOT in question and to repair, maintain, repaint and restore the LOT or such improvements and the cost thereof shall be a binding, personal obligation of such OWNER when billed by the ASSOCIATION as well as a lien upon the LOT in question. The lien provided in this paragraph shall have the same enforceability and priority as the lien provided for in ARTICLE XI of the DECLARATION.

Some or all of LOTS 334 THROUGH 353 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 AMENDMENT 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.

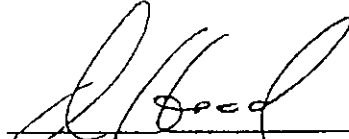
The following shall apply to LOTS 334 THROUGH 353, ROCK CREEK, PHASE FOUR: The ground floor livable area (heated and cooled area) of the main building or structure, exclusive of open porches and garages, shall contain not less than one thousand eight hundred (1,800) square feet in the case of a one (1) 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.

B. Purpose. The purpose of this AMENDMENT is to amend the SUBSEQUENT AMENDMENT. Except as provided for in this AMENDMENT, all of the terms, conditions and provisions of the SUBSEQUENT AMENDMENT and the DECLARATION, as amended, shall remain in full force and effect and be unchanged.


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:   
DAVID H. HEAD  
Its: Member


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

BY:   
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

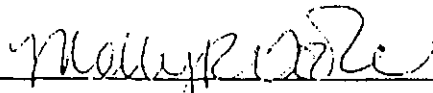
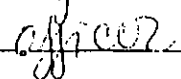
BY:   
J.M. PHILLIPS  
Its: Authorized Agent

H/M PARTNERS, L.L.C., an Alabama Limited Liability Company,  
owns LOTS 335, 336, 337, 338, 340, 341, 342, 343, 344, 345, 346,  
347, 348, 349, 350, 351, 352 and 353.

CONSENT BY MORTGAGEE OF  
LOTS 335, 336, 337, 338, 340, 341, 342, 343, 344, 345,  
346, 347, 348, 349, 350, 351, 352 AND 353

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.

AMSOUTH BANK OF ALABAMA

BY:   
Its: 

ROBERT C. LUCASSEN and ELOISE B. LUCASSEN own LOT 334.

Robert C. Lucassen  
ROBERT C. LUCASSEN

Eloise B. Lucassen  
ELOISE B. LUCASSEN

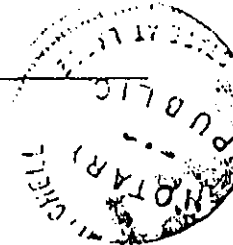
STATE OF ALABAMA :

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 5th day of November, 1996.

Barbara Mitchell  
NOTARY PUBLIC  
My Commission Expires:



My Commission Expires 08-26-2000

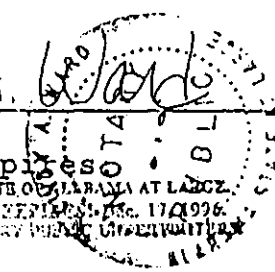
STATE OF ALABAMA :

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 5th day of November, 1996.

Cindy A. Ward  
NOTARY PUBLIC  
My Commission Expires  
NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
MY COMMISSION EXPIRES DEC. 17, 1996  
BONDED THROUGH NOTARY PUBLIC LIABILITY



MSC0091 REC 0304

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.

Given under my hand and seal this 5<sup>th</sup> day of November, 1996.

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.

STATE OF ALABAMA :

COUNTY OF Jefferson :

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Wally R. Toul, whose name as Officer, of AMSOUTH BANK OF ALABAMA 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 7 day of Nov, 1996.

Joanna B. Blaine  
NOTARY PUBLIC  
My Commission Expires:  
NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
MY COMMISSION EXPIRES: Dec. 17, 1996.  
BONDED THRU NOTARY PUBLIC UNDERWRITERS.

STATE OF ALABAMA :

COUNTY OF Baldwin :

I, the undersigned authority, a Notary Public in and for said State and County, hereby certify that ROBERT C. LUCASSEN, 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 the instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and seal this 15<sup>th</sup> day of NOVEMBER, 1996.


Terri R. Bennett  
NOTARY PUBLIC  
My Commission Expires: 2-1-97  
NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
MY COMMISSION EXPIRES: Dec. 17, 1996.  
BONDED THRU NOTARY PUBLIC UNDERWRITERS.

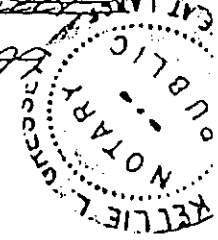
STATE OF ALABAMA :

COUNTY OF Baldwin :

I, the undersigned authority, a Notary Public in and for said State and County, hereby certify that ELOISE B. LUCASSEN, 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 the instrument, she executed the same voluntarily on the day the same bears date.

Given under my hand and seal this 15<sup>th</sup> day of NOVEMBER, 1996.

  
NOTARY PUBLIC  
My Commission Expires: 2-1-99



THIS INSTRUMENT PREPARED BY:  
Sam W. Irby  
Irby & Heard, P.C.  
Attorneys At Law  
317 Magnolia Avenue  
Post Office Box 1031  
Fairhope, Alabama 36533  
(334)928-4555

Pud\Rock.04\Amend.06; 95-721