

STATE OF ALABAMA

HOUSTON COUNTY

MISC 247 464  
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Luke Cooley  
Judge of Probate  
Houston County, Alabama

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF**

**THE VILLAS AT HONEYSUCKLE COVE TOWNHOME SUBDIVISION**

This Declaration is made and entered into this 18 day of October, 2006, by Villas at Honeysuckle Cove, LLC, an Alabama Limited Liability Company, hereinafter referred to as the "Declarant," for itself and for its successors, grantees and assigns.

**WITNESSETH:**

WHEREAS, Declarant is the owner of certain property in Houston County, Alabama, which is more particularly described as:

All of the property embraced in THE VILLAS AT HONEYSUCKLE COVE TOWNHOME SUBDIVISION, a subdivision in the City of Dothan, Houston County, Alabama, as per plat of same recorded in Plat Book 11, Page 96, in the Office of the Judge of Probate of Houston County, Alabama. ~

NOW THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties

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having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

### ARTICLE I: DEFINITIONS

Section 1: "Association" shall mean and refer to THE VILLAS AT HONEYSUCKLE COVE HOMEOWNERS ASSOCIATION, INC., its successors and assigns.

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

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

Section 4: "Common Elements" shall mean and refer to all portions of the property not encompassed and included in each lot as herein defined, and the Common Elements that are shown, marked, and identified as such on the plat of THE VILLAS AT HONEYSUCKLE COVE TOWNHOME SUBDIVISION, a subdivision in the City of Dothan, Houston County, Alabama, as per plat of same recorded in Plat Book 11, Page 96, in the Office of the Judge of Probate of Houston County, Alabama (hereinafter referred to as the "Plat"). These Common Elements include the land as parking areas, rainwater detention areas, border fences, brick pavers in the street right of

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ways and sidewalks, private access easements, walks, lawns, trees, shrubs, easements or other improvements as shown on said Plat or as prescribed by the By-Laws. All other parts of the property outside of each lot, as defined herein, necessary or convenient to its existence, maintenance and safety, or normally in common use, are part of the Common Elements.

Section 5: "Lot" shall mean and refer to an individual plot of land shown upon the Plat together with all improvements situated thereon.

Section 6: "Declarant" shall mean and refer to Villas at Honeysuckle Cove, LLC, an Alabama Limited Liability Company, its successors and assigns if such successors or assigns should acquire more than five undeveloped lots from the Declarant for the purpose of development.

Section 7: "Plat" shall mean and refer to the Plat of THE VILLAS AT HONEYSUCKLE COVE TOWNHOME SUBDIVISION, a subdivision in the City of Dothan, Houston County, Alabama, as per plat of same recorded in Plat Book 11, Page 96, in the Office of the Judge of Probate of Houston County, Alabama and all additions and annexations of proposed properties as referred to herein and in the Plat.

## ARTICLE II: PROPERTY RIGHTS

Section 1: Owner's Easements of Enjoyment. Every owner shall have a right and enjoyment in and to the Common Elements which shall be appurtenant to and shall pass with the title to every lot subject to the following provisions:

(a) the right of the Association to suspend the voting rights and right to use of the

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Common Elements by an owner for any period during which any assessment against his lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(b) the right of the Association to dedicate or transfer all or any part of the Common Elements to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members agreeing to such dedication or transfer has been recorded.

Section 2: Delegation of Use. Any owner may delegate, in accordance with the By-Laws, his right or enjoyment to the Common Elements to his guests or tenants.

### **ARTICLE III: MEMBERSHIP AND VOTING RIGHTS**

Section 1: Every owner of a lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment.

Section 2: The Association shall have two classes of voting membership.

Class A. Class A members shall be all Owners of lots, including all annexations to the Properties, with the exception of the Declarant and shall be entitled to one (1) vote for each lot owned. When more than one person hold a fee simple interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they determine between or among themselves, but in no event shall more than one (1) vote be cast with respect to any lot.

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Class B. Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each lot owned. The Class B membership shall cease and be converted to Class A membership when all lots have been built and/or sold.

#### **ARTICLE IV: COVENANT FOR MAINTENANCE ASSESSMENTS**

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each lot owned within the Properties, hereby covenants, and each Owner of any lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the lot and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety, business and/or welfare of the owners and/or tenants of the Properties and for the improvements and maintenance of the Common Elements.

Section 3. Special Assessments for Capital Improvements. In addition to the

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annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members of who are voting in person or by proxy at a meeting duly called for this purpose.

Section 4. Notice and Quorum for Any Action Authorized Under Sections 3.

Written notice of any meeting called for the purpose of taking any action authorized under Section 3 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 5. Uniform Rate of Assessment. Both annual and special assessments shall be apportioned equally to each lot.

Section 6. Date of Commencement of Annual Assessments

Due Dates. The annual assessments provided for herein shall commence as to all lots on

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

Section 7 Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of ten percent (10%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Elements or abandonment of his lot.

Section 8. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any

assessments thereafter becoming due or from the lien thereof.

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Section 9. Sanitary Sewer lots. Each sanitary sewer unit is to be maintained by the lot owners whose lots are served by said sanitary sewer unit. Each lot owner shall be responsible for repairing any damage caused by the maintenance of his sanitary sewer unit.

#### **ARTICLE V: ARCHITECTURAL CONTROL**

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by an Architectural Control Committee composed of composed of three (3) members. Hugh Wheelless, Irwin Autrey, and Greg Unger shall be the initial members. It is to be the function of the Architectural Control Committee to consider and approve all proposed construction as to external design, location, changes and facade, outside wall covering, or any other external change in existing structures or fences. Failure of the Architectural Control Committee to approve any written proposed construction plan within forty-five (45) days of receiving such plans or proposals shall be deemed an approval of the proposal or requested plan by the Architectural Control Committee. No building or structure shall be erected, altered, placed or permitted to remain on a lot in the Subdivision unless and until the Architectural Control Committee has approved in

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writing the external design and location pursuant to this paragraph. In the event of death or resignation of one (1) of the above named members of the committee, the survivors shall appoint a replacement for such member of the committee. At such time as the developer has sold all of the lots in the subdivision the Architectural Control Committee may tender their resignation and their successors may be appointed by a majority vote of Villas at Honeysuckle Cove Home Owner's Association, an unincorporated association.

#### **ARTICLE VI: EASEMENTS, COVENANTS AND RESTRICTIONS**

Section 1: Use of Property. Each Owner shall be entitled to the exclusive ownership and possession of his lot and may use the Common Elements in accordance with the purpose for which they were intended without hindering or encroaching upon the lawful rights of other Owners.

Section 2: Ingress and Egress. A blanket easement is hereby granted and created for vehicular and pedestrian ingress and egress to, from, or over the Common Elements and the Private Access Easements for the benefit of each lot within the Properties and for maintenance of such easements on the Properties.

Section 3: Utility and Private Access Easements. There is hereby created a blanket easement as reflected on the Plat upon, across, over and under all of the Properties and the lots in the said Property for ingress, egress, private access, installation, replacing, repairing and maintaining all utilities, including but not limited to water, sewers (sanitary and storm), gas, telephones, internet and electricity, and cable television wires. By virtue of this easement, it shall be expressly permissible for the providing electrical

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and/or telephone company to erect and maintain the necessary poles and other necessary equipment on said Properties and to affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of said lots. A portion of the wall of the exterior of the lots on which the electrical utility boxes are located shall constitute a "Common Element" hereunder for servicing by the utility company. An easement is further granted to all police, fire protection, ambulance and all similar persons to enter upon the driveways and streets in the performance of their duties. Further, an easement is hereby granted to the Association, its officers, agents, employees, and to any management company elected by the Association to enter in or to cross over the lots as provided for herein. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, or other utilities or roadway may be installed or relocated on said Properties except as initially approved by the Declarant or as thereafter approved by Declarant or the Association's Board of Directors. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant shall have the right to grant such easement on the Properties without conflicting with the terms hereof. The easements provided for in this Article shall in no way affect any other recorded easement on said premises. There shall be appurtenant to each lot a non-exclusive easement for use of all pipes, wire, cables, conduits, utility lines, flues and ducts serving such lot and situated in any other lot. Each lot shall be subject to an easement in favor of other lots for use of all pipes, wire, cables, conduits, utility lines, flues and ducts situated in such lot

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and serving such other lots.

Section 4: Encroachments. If any portion of the Common Elements now encroaches upon any lot, or if any such encroachment shall occur hereafter as a result of (i) settling of a lot or lots; (ii) repair, alteration or reconstruction of the Common Elements made by or with the consent of the Association; (iii) repair or reconstruction of a lot or lots following damage by fire or other casualty; or (iv) condemnation or eminent domain proceedings, a valid easement shall exist for such encroachment and for maintenance of the same.

Section 5: Right of Access. The Association shall have the irrevocable right, to be exercised by the Manager or the Board of Directors, to have access to each lot from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Elements therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the Common Elements or to another lot.

Section 6: Maintenance of Common Elements. The necessary work of maintenance, repair and replacements of the Common Elements and the making of any additions or improvements thereto shall be carried out as provided in this Declaration and the By- Laws.

Section 7: Prohibited Work. No lot Owner shall contract for or perform any maintenance, repair, replacement, removal or alteration of the Common Elements or any addition thereto except the Association or its Officers. No lot Owner shall take or cause

to be taken any action within his lot which would jeopardize the soundness or safeness of any part of the property or impair any easement or right of any easement Owner or affect the Common Elements without the unanimous consent of all of Owners who are affected thereby.

Section 8: Use Restrictions. Each lot in The Villas at Honeysuckle Cove Townhome Subdivision shall be and are restricted exclusively to use and occupancy as residential homes, subject to the following:

- (a) The lots may only be used for lawful purposes.
- (b) The common elements shall be used only for the furnishing of the services and facilities for which they are reasonably suited.
- (c) No nuisances shall be allowed on the property, nor shall any use or practice be allowed which is a source of unreasonable annoyance or which unreasonably interferes with the peaceful possession or proper use of the property by its owners and occupants.
- (d) No immoral, improper, offensive, or unlawful use shall be made of the property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. Violations of laws, orders, rules, regulations, or requirements of any governmental agency having jurisdiction thereof, relating to any portion of the property, shall be corrected or removed by and at the sole expense of the lot owner or the Board of Directors, whichever shall have the obligation to maintain or repair such portion of the property.
- (e) No lot shall be used for any use which creates obnoxious odors or noise which

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may unreasonably interfere with the use and enjoyment of other lots.

(f) Each lot shall be conveyed as a separately designated and legally described freehold estate, subject to the terms, conditions, and provisions hereof, to be used and occupied as hereafter and above more specifically referenced.

(g) All lots in the Subdivision shall be residential lots. No building or structure shall be erected, placed, or permitted to remain on any residential lot other than single family dwellings. No more than one single family (1) dwelling may be erected on any one numbered lot in the Subdivision.

(h) No trailer, tent, garage, or other outbuilding shall be erected on any residential lot temporarily or permanently as a residence and no structure of a temporary character shall be used as a residence.

(i) No sign of any kind shall be displayed to the public view on any lot except on a professional sign of not more than one (1) square foot or one (1) sign of not more than five (5) square feet advertising a property for sale or rent or signs used by builders or contractors to advertise their property for sale during and after construction of residences.

(j) No animals, livestock or poultry of any kind shall be raised, bred, or kept on a lot, except that domestic dogs, cats, or other household pets may be kept provided that they are not kept, bred, or maintained for any commercial purpose.

(k) No fence, wall, hedge, or shrub planting which obstructs 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

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intersection of the street lines. No trees shall be permitted to remain within this area unless the foliage line is maintained at sufficient height to prevent obstruction of such sight line.

- (l) There shall be no discharge of firearms of any type within the Subdivision.
- (m) All fences erected on the premises must have the written approval of the Architectural Control Committee prior to being erected.
- (n) The sidewalks, driveways, and entrances must not be obstructed or encumbered or used for any purpose other than for ingress and egress to and from structures erected on lots.
- (o) Lot owners shall not cause or permit any disturbing noise or objectionable odors to be produced upon or emanate from their property.
- (p) Owners shall not keep or permit to be kept on their premises any flammable, combustible or explosive material, nor any chemical or such other dangerous substances.
- (q) No wiring for electrical or telephone installation or for any other purpose, nor any television or radio antenna, machines, or window air conditioners shall be installed on the exterior of any structures placed on a lot, nor shall any similar improvements that protrude through the walls or roof of a structure be allowed except as may be expressly authorized by the Architectural Control Committee.
- (r) Owners, tenants, and occupants shall exercise reasonable care to avoid making or permitting to be made, disturbing or objectionable noises and using or playing

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or permitting to be used or played musical instruments, radios, stereo systems, television sets, amplifiers, or any other such devices in a manner as may disturb or tend to disturb the owners, tenants or occupants of other structures or residences in the subdivision.

(s) No storage building or outbuilding may be placed on any lot unless the location, design and construction as well as the exterior color of such building shall have been approved in writing by the Architectural Control Committee.

(t) No exterior clothes lines may be erected or maintained on any lot.

(u) No automotive repairs shall be performed on any vehicles except in enclosed garages.

(v) No mobile homes, boats, campers or trailers shall be parked outside or in front of a residential structure for any extended period of time. The same may be parked or stored in the rear of such residential structures if not visible from the street.

(w) During the construction of a residential structure or other building, a builder or contractor shall be allowed an additional five (5) feet for scaffolding or other construction purposes over and across the adjacent lots if needed. The builder or contractor shall bear the cost of repairing any landscaping, fences, or other improvements on such adjacent lots should such builder or contractor avail himself of the use of adjacent property.

(x) All sidewalks and driveways on homes in The Villas at Honeysuckle Cove Townhome Subdivision must be constructed with concrete or brick pavers.

(y) Each home in The Villas at Honeysuckle Cove Townhome Subdivision is

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required to purchase mailbox and garbage can receptacles from Villas at Honeysuckle Cove, LLC or as approved by Villas at Honeysuckle Cove, LLC or the Architectural Control Committee..

(z) Minimum setback lines shall be as reflected on the recorded Plat.

(aa) Use restrictions and rules and regulations may be enforced by the imposition of reasonable monetary fines and suspension of use and voting privileges. These powers, however, shall not be construed as limiting any other legal means of enforcing the use restriction or rules or regulations of the Association. Any fines so imposed shall be considered as assessments against the lot and may be collected in the manner provided for collection of other assessments.

## **ARTICLE VII: GENERAL PROVISIONS**

Section 1: Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, and to prosecute a suit at law or equity against the person or persons violating or attempting to violate the covenants or restrictions, or to recover damages for such violations. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2: Severability. Invalidation of any one of these covenants, or restrictions by judgment or court order shall in no wise affect any other provisions which

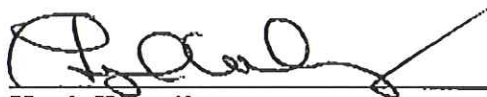
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shall remain in full force and effect.

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

Section 4: Recording. No amendment to this Declaration shall be effective unless and until duly recorded in the Office of the Judge of Probate of Houston County, Alabama.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto caused this instrument to be executed this 18 day of October, 2006.



Hugh Wheelless

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STATE OF ALABAMA

HOUSTON COUNTY

I, the undersigned notary public, in and for said county and state, hereby certify that Hugh Wheelless, whose name as Managing Member of Villas at Honeysuckle Cove, LLC, 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 his free act and as the act of said limited liability company.

Betty W. Brewer  
Notary Public

My Commission expires: \_\_\_\_\_

BETTY W. BREWER  
ALABAMA STATE AT LARGE  
MY COMMISSION EXPIRES  
OCTOBER 8, 2010

Recording Fee  
TOTAL

62.00  
62.00

DothanAR  
Dothan Agent Resources

Original Given to  
Jeri Aubrey

**FIRST AMENDMENT TO DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS OF THE  
VILLAS AT HONEYSUCKLE COVE TOWNHOME SUBDIVISION**

The original recorded Declaration of Covenants, Conditions and Restrictions of The Villas at Honeysuckle Cove Townhome Subdivision recorded in Miscellaneous Book 247 beginning at page 464 and recorded on October 30, 2006 in the Office of the Judge of Probate of Houston County, Alabama are hereby amended as follows:

**ARTICLE VI: EASEMENTS, COVENANTS AND RESTRICTIONS**

Section 8:

(bb) Lots 41, 42, and 43, Block "A", shall be subject to an ingress and egress easement for a common driveway. Every Owner, and their invitees, licensees, agents, successors and assigns, shall have joint ingress and egress over a common driveway commencing on Lot 42, and shall equally share all maintenance costs for said common driveway. Neither the Owners of Lots 41, 42, and 43, Block "A" nor their invitees, licensees, agents, successors or assigns shall obstruct, impede or otherwise prohibit the use or access to, across, or through the common driveway by any other Owner or their invitees, licensees or agents, successors or assigns.

This the 14<sup>th</sup> day of December, 2006.

**Villas at Honeysuckle Cove, LLC  
an Alabama Limited Liability  
Company, Declarant**

By: 

Hugh W. Wheelless, Jr.  
Its Managing Member