

**DECLARATION OF PROTECTIVE COVENANTS  
OF  
CARAVELLA SUBDIVISION**

**DECLARATION OF PROTECTIVE COVENANTS**

**OF**

**CARAVELLA SUBDIVISION**

THIS DECLARATION OF PROTECTIVE COVENANTS for CARAVELLA SUBDIVISION, made this \_\_\_\_\_ day of \_\_\_\_\_, 2004, by THE OAKS GROUP, INC, an Alabama Partnership (hereinafter referred to as the Owners and/or Developer)

WITNESSETH:

WHEREAS, The Oaks Group, Inc. (hereinafter referred to as Developer), is the Owner of that real Property described in the plat of Caravella, (hereinafter referred to as Caravella and/or the Property) and recorded in the office of the Judge of Probate of Houston County, Alabama, in Plat Book \_\_\_\_\_, Page \_\_\_\_\_, and

WHEREAS, the Owners desire to establish and enforce uniform standards of development quality and to provide for the effective preservation of the appearance, value and amenities of Caravella, which establishment, enforcement and preservation shall benefit all Owners of the Property located thereon and, to that end, desire to subject said real Property to the protective covenants and Restrictions herein contained, all of which are for the benefit of the said real Property and the Owners thereof;

NOW, THEREFORE, the Owners hereby declare that the Property, 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 Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each thereof;

AND FURTHER, Developer has caused Caravella The Oaks Property Owners' Association and Caravella Family Homes and Garden Homes Owners' Association, to be formed for the purpose of providing non-profit organizations to serve as representative of Developer and Owners of any part of Caravella, which

hereafter is made subject to these protective covenants (herein collectively referred to as Restrictions) with respect to: assessment, collection and application of all charges imposed hereunder, the enforcement of all covenants contained herein and all liens created hereby, the creation, operation, management and maintenance of the facilities and services referred to hereafter and such other purposes described in this charter.

## ARTICLE I MUTUALITY OF BENEFIT AND OBLIGATION

The Restrictions set forth herein are made for the mutual and reciprocal benefit of each and every part of Caravella Subdivision subject to the Restrictions (sometimes referred to as Property or Member's Property) and are intended to create mutual, equitable servitudes upon each such part of the Property and in favor of each and all such parts of the Property therein, to create reciprocal rights between the respective Owners and future Owners of such Property; and to create a privity of contract and estate between the grantees of said Property, their heirs, successors and assigns. The Restrictions do not apply to or affect any part of Caravella Property, which is not subjected specifically by written instrument to this Declaration. All Property shall be held, transferred, sold, conveyed, used, leased, occupied, mortgaged or otherwise encumbered subject to all the terms and provisions of this Declaration applicable to the Property, including, but not limited to, the lien provisions set forth in Section X hereof.

## ARTICLE II ARCHITECTURAL COMMITTEES: ARCHITECTURAL CONTROL

### SECTION 2.1. Architectural Committees.

There shall be a committee for architectural control established for **The Oaks** section (Lots 49 – 66) of the subdivision and there shall be a committee for architectural control established for the **Family and Garden Homes** section (Lots 1 – 11, 33 – 48 and 12 – 48) of the subdivision.

Each of the "Architectural Committees" shall be composed of at least three (but no more than five) individuals designated and re-designated from time to time by the Developer until the Developer specifically delegates control of the Architectural Committees to the Caravella Property Owners' Associations.

Except, as hereinafter provided, the affirmative vote of a majority of the

Membership of the Architectural Committees shall be required in order to adopt or promulgate any rule or regulation, or to make any findings, determinations, ruling or order, or to issue any permit, authorization or approval pursuant to directives or authorizations contained herein. With regard to review of plans and specifications as set forth in this Article II, however, and with regard to all other specific matters (other than the promulgation of rules and regulations) as may be specified by resolution of the entire Architectural Committees, each individual Member of the Architectural Committees shall be authorized to exercise the full authority granted herein to the Architectural Committees. Any approval by one such Member of any plans and specifications submitted under this Article II, or the granting of any approval, permit or authorization by one such Member in accordance with the terms hereof, shall be final and binding. Any disapproval, or approval based upon modification or specified conditions by one such Member shall also be final and binding.

## 2.2 Approval Required.

All homes built within Caravella must be built by an approved licensed homebuilder/contractor. The Architectural Committees will be the final say in the approval of the builder. No Structure shall be commenced, erected, placed, moved on to or permitted to remain on any Parcel, nor shall any existing Structure upon any Parcel be altered in any way which materially changes the exterior appearance thereof, nor shall any new use be commenced on any Parcel, unless two (2) set of plans and specifications (including a description of any proposed new use) thereof shall have been submitted to and approved in writing by the Architectural Committees. Such plans and specifications shall be in such form and shall contain such information as may be required by the Architectural Committees, but in any event shall include: (i) architectural plans, elevations and specifications showing the nature, kind, exterior color schemes, shape, height and materials of all Structures proposed for the Parcel; (ii) a site plan of the Parcel showing the location with respect to the particular Parcel (including proposed front, rear, and side setbacks) of all Structures, the location thereof with reference to Structures on adjoining portions of the Property, and the number and location of all parking spaces and driveways on the Parcel; (iii) a grading plan for the particular Parcel; (iv) a drainage plan and (v) a plan for landscaping, (vi) the Oaks Section shall have a tree identification plan submitted for trees over 8" in diameter.

## 2.3 Basis for Disapproval of Plans.

The Architectural Committees shall have the right to disapprove any plans and Specifications submitted hereunder because of any of the following:

- (a) Failure of such plans or specifications to comply with any of the Restrictions;
- (b) Failure to include information in such plans and specifications as may have been reasonably requested;
- (c) Objection to the exterior design, appearance or materials of any proposed Structure;
- (d) Objections to the location of any proposed Structure upon any Parcel or with reference to other Parcels in the vicinity;
- (e) Objection to the site plan, grading plan, drainage plan or landscaping plan for any Parcel;
- (f) Objection to the color scheme, finish, proportions, style of architecture, materials, height, bulk, or appropriateness of any proposed Structure;
- (g) Objection to parking areas proposed for any Parcel on the grounds of
  - (i) incompatibility to proposed uses and Structures on such Parcel or
  - (ii) the insufficiency of the size of parking areas in relation to the proposed use of the Parcel;
- (h) Failure of plans to take into consideration the particular topography, vegetative characteristics, natural environment, or storm water runoff of the Parcel;
- (i) In the Oaks Section, special care will be used in design to save any trees over 10" in diameter;
- (j) Any other matter which, in the judgment of the Architectural Committees, would render the proposed Structure, Structures or uses inharmonious with the general plan of improvement of the Property or with Structures or uses located upon other Parcels in the vicinity.

In any case where the Architectural Committees shall disapprove any plans and specifications submitted hereunder, or shall approve the same only as modified or upon specified conditions, such disapproval or qualified approval shall be accompanied by a statement of the grounds upon which such action was based. In

any such case the Architectural Committees shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal can be prepared and submitted for approval.

The scope of review by the Architectural Committees is limited to appearance only and does not include any responsibility or authority to review for structural soundness, compliance with building or zoning codes or standards, or any other factors.

#### 2.4 Retention of Copy of Plans.

Upon approval by the Architectural Committees of any plans and specifications submitted hereunder, a copy of such plans and specifications, as approved, shall be deposited for permanent record with the Architectural Committees, and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same.

#### 2.5 Rules of Architectural Committees; Effect of Approval and Disapproval; Time for Approval.

The Architectural Committees may promulgate rules governing the form and content of plans to be submitted for approval or requiring specific improvements on Parcels, including, without limitation, exterior lighting and planting, and may issue statements of policy with respect to approval or disapproval of the architectural styles or details, or other matters, which may be presented for approval. Such rules and such statements of policy may be amended or revoked by the Architectural Committees at any time, and no inclusion in, omission from or amendment of any such rule or statement shall be deemed to bind the Architectural Committees to approve or disapprove any feature or matter subject to approval, or to waive the exercise of the Architectural Committees's discretion as to any such matter, but no change of policy shall affect the finality of any approval granted prior to such change. Approval for use on any Parcel of any plans or specifications shall not be deemed a waiver of the Architectural Committees's right, in its discretion, to disapprove such plans or specifications or any of the features or elements are subsequently submitted for use on any other Parcel or Parcels. Approval of any such plans and specifications relating to any Parcel, however, shall be final as to that Parcel and such approval may not be revoked or rescinded thereafter, provided, (i) that the Structures or uses shown or described on or in such plans and specifications do not violate any specific prohibition contained in the Restrictions, and (ii) that the plans and specifications, as approved, and any condition attached to any such approval, have been adhered to and complied with in regard to all Structures on and uses of the Parcel in

question.

In the event that the Architectural Committees fails to approve or disapprove any plans and specifications as herein provided within thirty (30) days after submissions thereof, the same shall be deemed to have been approved, as submitted, and no further action is required.

#### 2.6 Failure to Obtain Approval.

If any Structure shall be altered, erected, placed or maintained upon any Parcel, or any new use commenced on any Parcel, otherwise than in accordance with plans and specifications approved by the Architectural Committees pursuant to the provisions of this Article II, such alteration, erection, maintenance or use shall be deemed to have been undertaken in violation of this Article II, and without the approval required herein, and upon written notice from the Architectural Committees, any such Structure so altered, erected, placed or maintained upon any Parcel in violation hereof shall be removed or re-altered, and any such use shall be terminated, so as to extinguish such violation.

#### 2.7 Waiver of Liability.

Neither the Architectural Committees nor any architect nor agent thereof, nor Caravella Property Owners, nor the DEVELOPER, nor any agent, servant or employee of the foregoing, shall be responsible in any way for any failure of Structures to comply with requirements of the Declaration, nor for any defects in any plans and specifications submitted, revised or approved in accordance with the foregoing provisions, nor for any structural or other defects in any work done according to such plans and specifications, and all persons relying thereon or benefiting therefrom agree not to sue or claim against the entities and persons referred to in this Section 2.7 for an cause arising out the matters referred to in this Section 2.7 and further agree to hold said parties harmless and do hereby release said entities and persons for any and every such cause.

### ARTICLE III ZONING AND SPECIFIC RESTRICTIONS

The Restrictions shall not be taken as permitting any action or thing prohibited by the applicable zoning laws, or the laws, rules or regulations of any governmental authority, or by the specific Restrictions imposed by any deed or lease. In the event of any conflict, the most restrictive provision of such laws, rules, regulations, deeds, leases or the Restrictions shall be taken to govern and control.

## ARTICLE IV SITE DEVELOPMENT

### SECTION 4.1 Site to be Staked Prior to Tree Cutting.

After the plan for the Structure is approved, the site of the Structure must be staked out and such site approved by the Architectural Committees before tree cutting is done. Existing vegetation on each Parcel shall be saved whenever it is practical to do so. All areas on site and outside the areas of disturbance shall be "corded off" with high visibility surveyor's flagging tape and no vegetation shall be removed from the corded areas and no material may be stored over the roots of this vegetation without prior approval of the Architectural Committees. Removal of "underbrush" from the corded areas is expressly prohibited except on Architectural Committees approval. No tree may be cut or removed from any Parcel without consent of the Architectural Committees until the Architectural Committees approves the building plans, site plans, and site staking.

### 4.2 Site Clearing and Construction Requirements.

An area shall be designated as the construction entrance and all traffic will use such entrance to access the Property. This entrance shall be designed in such a way as to alleviate soils from entering the roadway (ie. use of gravel or a wash down area). This roadway shall be kept free of dirt, gravel, concrete, or other construction debris. Each contractor shall insure that the site is kept in good order and that they are not contributing to any unsightly appearance to the development. At the direction of the review committee, the contractor will be asked to fix problem areas. If remedies are not taken, the review committee has right to fix the problems at the cost of the contractor.

### 4.3 Erosion Control.

The Owner of a Parcel, or his contractors shall take erosion control measures to protect adjacent properties including roads and lakes during construction on such Parcel and thereafter until the soil is stabilized on the Parcel. This may be accomplished by the use of silt fencing or other protective measures intended to intercept and filter the excess storm water runoff from the Parcel. All such erosion control measures, including slope stabilization, must be specified on the grading plan and must be approved by the Architectural Committees prior to commencement of grading activities.

### 4.4 Utility Lines and Appurtenances.

All gas, water, sewer, telephone and electrical feeder and service lines shall be installed as underground service unless otherwise approved by the Architectural Committees. All transformer boxes, meters or other such fixtures shall be adequately screened with plants or other materials approved by the Architectural Committees; provided that no planting or screening devices shall be placed so as to obstruct the normal servicing of either transformers, telephone pedestals, or other utility hardware. To the extent of the interest of the Owner of a Parcel, the Owner of a Parcel will not erect or grant to any person, firm or corporation the right, license or privilege to erect or use or permit the use of overhead wires, poles, or overhead facilities of any kind for electrical or telephone service on said real estate (except such poles and overhead facilities as may be required at those places where distribution facilities enter and leave the particular area) without the prior written consent of the Architectural Committees. Nothing herein shall be construed to prohibit overhead street lighting or ornamental yard lighting, where serviced by underground wires or cables. Where underground electric service is to be installed in order to permit installation of underground electrical service to each Parcel for the mutual benefit of all Owners therein, no Owner of any such Parcel will commence construction of any house on any such Parcel until such Owner (1) notifies the electric utility that such construction is proposed, (2) grants in writing to the electric utility such rights and easements as the electric utility requires in connection with its construction, operation, maintenance and removal of underground service lateral on each Parcel, and (3) otherwise complies with the Rules and Regulations for Underground Residential Distribution on file with and approved by the Alabama Public Service Commission.

If required by the electric utility, such electric utility, its successors and assigns, may retain title to the underground service lateral and outdoor metering trough or house power box (exclusive of circuit breakers) serving each said house, and said service entrance facilities provided by such utility will not in any way be considered a fixture or fixtures and thereby a part of said real estate, but will remain personal Property belonging to such utility, its successors and assigns, in accordance with applicable Rules and Regulations filed with and approved by the Alabama Public Service Commission.

#### 4.5 Connection Points for Utility Service Lines.

To the extent of the interests of the Owner of each Parcel, such Owners agree to connect utility service lines (including, but not limited to, gas, water, sewer and electricity) at points designated by the Developer.

#### 4.6 Sanitary Sewer Service Lines.

The Architectural Committees must approve the material for sanitary sewer service lines. Cast iron or ductile lines may be required in some or all Sections of the Property.

#### 4.7 Landscaping.

The Architectural Committees prior to any site disturbance must approve the landscape plan. The landscape plan shall indicate the proposed type, location, size and quantity of all plant materials to be planted on the Parcel. The Owner must faithfully execute the landscape plan submitted to and approved by the Architectural Committees within thirty (30) days after occupancy.

Residential landscaping should enhance the privacy of the residential Structures. However, it is essential that the greenbelt and common Property areas be maintained without strict definition of Property lines. It is also desirable that the natural ground cover of the land can weave throughout the residential development without its impedence by lots totally planted in grass without recognition of the natural element of the land. Therefore, the Architectural Committees shall closely scrutinize the proposed construction of any fence, wall, or hedge before such is allowed upon any Parcel. Further, because of the importance of the lakes to the overall beauty of the Property, as to each Parcel, which joins any of the lakes on Caravella, such construction shall be even more closely scrutinized.

It is the intent of this Section 4.7 to assure that a beautifully natural setting is maintained on the Caravella Property. Each Structure and the landscaping of each Parcel is a part of that setting and should serve to enhance, not detract from, that setting.

#### 4.8 Architectural Styles.

All exterior building materials must be of colors approved by the Architectural Committees. The architure of each Parcel must be in the opinion of the Architectural Committees, compatible with the overall natural setting of Caravella and with the surrounding buildings. As to any Structure on a Parcel which joins any of the lakes on Caravella, the portion of said Structure which faces said lakes shall be designed in a manner which gives the appearance of a front, so as to enhance the overall natural setting of the development and to assure that garages, utility rooms, storage rooms, and the like which are normally located in the back of residential Structures are not exposed to view from the lakes or from residences across the lakes from such Structure. Garages and carports on any Parcel shall not front either a roadway or a lake.

#### 4.9 Exterior Lighting.

Exterior lighting plans must be set forth on the architectural or landscape plans for a Parcel, and must be approved by the Architectural Committees. Exterior lighting shall be “environmental type” which directs all light beams downward with no spillover light or glare emitted off-site and shall be compatible with lighting used on other residential Structures in Caravella.

### ARTICLE V COVENANTS FOR MAINTENANCE

#### SECTION 5.1 Keep Parcel in Repair.

Each Owner shall keep all Parcels owned by him, and all improvements therein or thereon, in good order and repair, including the seeding, watering and mowing of all lawns, the pruning and cutting of all trees and shrubbery and the painting (or other appropriate external care) of all buildings and other improvements, all in a manner and with such frequency as is consistent with good Property management.

### ARTICLE VI GENERAL COVENANTS AND RESTRICTIONS

#### SECTION 6.1 General Prohibitions.

Without the prior written approval of the Architectural Committees:

- 6.1.1 No previously approved Structure on any Parcel shall be used for any purpose other than that for which it was originally designed.
- 6.1.2 No Parcel shall be split, divided, or subdivided for sale, resale, gift, transfer or otherwise.
- 6.1.3 To the extent of the interest of the Owner of a Parcel, no facilities, including poles and wires, for the transmission of electricity, telephone messages and the like shall be placed or maintained above the surface of the ground of any Parcel and no external or outside antennas or satellite dishes of any kind shall be allowed.

- 6.1.4 No boat, boat trailer, house trailer, trailer, motor home, motorcycle, golf cart, or any similar items shall be stored in the open on any Parcel for a period of time in excess of six (6) hours.
- 6.1.5 No chain link fences. Back fences only. All fences must be approved by the Architectural Control Committee.
- 6.1.6 All detached garages, pools and pool houses must be approved by the Architectural Control Committee.
- 6.1.7 Landscape plans shall be submitted to the Architectural Control Committee.

## 6.2 Size of Structures.

No building shall be permitted to be constructed on any lot in **The Oaks** section (Lots 49-66) of the subdivision with less than 3,000 square feet heated area, in the **Family Homes** section (Lots 1-11 and 33-48) of the subdivision with less than 2,400 square feet heated area, and in the **Garden Homes** section (Lots 12-32) of the subdivision with less than 2,200 square feet heated area.

## 6.3 Garages.

The **Garden Homes** section (Lots 12-32) of the subdivision shall have front-loaded side entry garages. Garage doors in such section shall be carriage style Wayne Dalton Simonton Series or approved equal type doors.

## 6.4 Preservation of Trees.

No tree having a diameter of six (6) inches or more (measured from a point two feet above ground level) shall be removed from any Parcel without the express written authorization of the Architectural Committees. This Section 6.2 shall be read in conjunction with Section 4.1, and the provisions of both Sections, where applicable, shall be observed prior to any tree cutting. The Architectural Committees, in its discretion, may adopt and promulgate rules and regulations regarding the preservation of trees and other natural resources and wildlife upon the Property. If it shall deem it appropriate, the Architectural Committees may mark certain trees, regardless of size, as not removable without written authorization. In carrying out the provisions of this Section 6.2, the DEVELOPER, Caravella Property Owners' Associations and the Architectural Committees and the respective agents of each may come upon any Parcel during reasonable hours for the purpose of inspecting or marking trees or in relation to the enforcement and

administration of any rules and regulations adopted and promulgated pursuant to the provisions hereof. Neither Caravella Property Owners' Associations nor the Architectural Committees, nor DEVELOPER, nor their respective agents shall be deemed to have committed a trespass or wrongful act by reason of any such entry or inspection.

#### 6.5 Animals.

No birds, livestock, animals or insects shall be kept or maintained on any Parcel without the express written consent of the Architectural Committees, except that ordinary domestic pets may be kept on a Parcel for purposes other than breeding or commercial. Pets will not be allowed to become a nuisance to Owners.

#### 6.6 Signs.

No sign or other advertising device of any nature shall be placed upon any Parcel. However, the Architectural Committees may, in its discretion, adopt and promulgate rules and regulations relating to signs, which may be employed. The builder and/or realtor upon approval will be allowed to place a tasteful sign on the Property. Signs designating the property's new owners will be allowed upon approval only. During the construction process the only signage allowed will be the Builder's, Realtor's, and/or new homeowners. If a model home is built or homes built for a special event, such as the Parade of Homes, then a sign thanking the contributors will be allowed, upon approval, during the event or time frame the home is left open.

#### 6.7 Accumulation of Refuse.

No lumber, metals or bulk materials shall be kept, stored, or allowed to accumulate on any Parcel, except building materials during the course of construction of any approved Structure. No harmful or noxious materials shall be stored, either inside any Structure, or outside any Structure on any Parcel, if said material pose any significant threat to public health and safety or to individuals employed or living within or in proximity to such Structures. If trash or other refuse is to be disposed of by being picked up and carried away on a regular and recurring basis, containers may be placed in the open on any day a pick-up is to be made. At all other times, trash and garbage containers shall be screened in such a manner so that they cannot be seen from adjacent and surrounding Property, and as approved by the Architectural Committees. All trash and garbage containers shall be kept in a clean and sanitary condition. The Architectural Committees, in its discretion, may adopt and promulgate reasonable rules and regulations relating to the size, shape, color, and type of containers permitted and the manner of storage and screening of the same on the Property.

#### 6.8 Pipes.

To the extent of the interest of the Owners of a Parcel, no water pipe, gas pipe, sewer pipe or drainage pipe shall be installed or maintained on any Parcel above the surface of the ground, except hoses and movable pipes used for irrigation purposes. Meters and valves for utilities shall be located underground, if feasible. If such meters and valves must be placed above ground, they shall be located at points approved in writing by the Architectural Committees, and proper screening shall be required. Under no circumstances will storm water pipes be allowed to empty into lakes without prior Architectural Committees approval.

#### 6.9 Maintenance of Hedges and Plants.

The Caravella Property Owners Associations shall have the right, but not the obligation, to enter upon any Parcel and trim or prune, at the expense of the Owner (subject to any applicable limitations set forth in Section 5.1), any hedge or other planting which in the opinion of Caravella Property Owners' Associations, is unattractive in appearance; provided, however, that the Owner shall be given fifteen (15) days' prior written notice of such action.

#### 6.10 Machinery.

No machinery shall be placed or operated upon any Parcel except such machinery as is usual in maintenance of a private residence.

#### 6.11 Use Authorized by Architectural Committees.

Notwithstanding other provisions herein, the Architectural Committees may authorize any Owner with respect to his Parcel to:

- (a) Temporarily use a single family dwelling house for more than one family; or,
- (b) Maintain a sign other than as expressly permitted herein; or,
- (c) Locate Structures other than the principal dwelling house within set-back areas

#### 6.12 Mail Boxes.

The design of all mailboxes must be approved by the Architectural Committees and free-standing mail boxes equipped with lighting may be required in some or all Sections of the Property and said mailboxes shall be furnished by the DEVELOPER and the Property Owners shall pay to the DEVELOPER its cost for same.

6.13 Outside Burning.

Outside or open burning of trash, refuse or other material upon any Parcel is prohibited.

6.14 Nuisance.

No obnoxious, offensive, or illegal activities shall be carried on upon any Parcel; nor shall anything be done in any Parcel, which may be or may become annoyance or nuisance to the neighborhood.

ARTICLE VII  
WATERFRONT AREAS AND LAKES

SECTION 7.1 Constructions Along Lakes.

Any Parcel, which shall abut upon any lake or stream, shall be subject to the following additional Restrictions:

- 7.1.1 No wharf, bulkhead, or other Structure of obstruction shall be built or maintained upon any waterfront Parcel or into or upon any lake or stream on the Property or adjacent thereto.
- 7.1.2 No water shall be pumped or removed from lakes, streams, or springs for any use. Private wells will not be permitted.
- 7.1.3 Except with prior written approval of Caravella Property Owners' Associations, no boats, boat railways, launching facilities or any similar type of Structures or equipment shall be installed, constructed or maintained upon any Parcel; nor shall any boat or boat trailer be stored on any Parcel in such manner as to be visible from surrounding properties or from the abutting lake.
- 7.1.4 Landscaping of said Parcels shall be in accordance with Section 4.6.

7.2 No Boats on Waterway.

No motorized boat of any kind shall be operated upon any lake on the Property. The owners of such properties on said lake shall regulate use of canoes, paddleboats, etc..

### 7.3 Trash and Refuse

No garbage, trash, or other refuse shall be dumped into any lake on the Property.

### 7.4 Use of Lakes; No liability of Caravella Property Owners' Associations or DEVELOPER.

No consent or authority to use any lake on the Property is granted or implied by these Restrictions and such use may be prohibited or unauthorized. Notwithstanding anything in this Declaration to the contrary, the use of any lake shall be at the sole risk and liability of the user, and no approval of any Structure or use relating to any lake by Caravella Property Owners' Associations, or the DEVELOPER, shall impose any liability on Caravella Property Owners' Associations or the DEVELOPER to any person or entity for damages, injury or death relating to any such use.

## ARTICLE VIII EASEMENTS

### SECTION 8.1 Drainage Easements.

Except with prior written permission from the DEVELOPER, or (when so designated by the DEVELOPER) from the Architectural Committees, drainage flow shall not be obstructed nor be diverted from drainage swales, storm sewers and/or utility easements as designated herein, or as may hereafter appear on any plat of record in which reference is made to these Restrictions. DEVELOPER may cut drain ways for surface water wherever and whenever such action may appear to DEVELOPER to be necessary in order to maintain reasonable standards of health, safety and appearance; provided, however, that DEVELOPER's right to cut drain ways on an Owner's Property shall terminate when the principal Structure and approved landscaping on such Property have been completed. These easements an rights expressly include the right to cut any trees, bushes or shrubbery, make any grading of the soil, or to take any other similar action reasonable necessary to provide economical and safe utility installation and to maintain reasonable standards of health and appearance. The provisions hereof shall not be construed to impose any obligation upon DEVELOPER to cut such drain ways.

### 8.2 Grading.

DEVELOPER may at any time make such cuts and fills upon any Parcel or other part of Caravella and do such grading and moving of earth as, in its judgment, may be necessary to improve or maintain the streets in or adjacent to the

Caravella Property and to drain surface waters therefrom.

## ARTICLE IX ASSESSMENT OF ANNUAL CHARGE

### SECTION 9.1 Assessments.

For the purpose of providing funds for use as specified in Article XI hereof, Caravella Property Owners' Associations, shall in each year, commencing with the year 2005, assess against the Assessable Property a charge (which shall be uniform with respect to all Assessable Property) equal to a specified number of dollars per Parcel. Each such Parcel shall be charged with and subject to a lien for the amount of such separate assessment, which shall be deemed the "Annual Charge" with respect to such Parcel. It is specifically understood and represented that the utility charges to each Parcel, including cable, sewer, water, electricity, telephone, gas (if any) and other utilities are the separate and personal responsibility of the Parcel Owner and are not part of any assessments provided herein. The Oaks section shall be accessed for maintenance of common area, fencing, and gates which only pertain to said section.

### 9.2 Date of Commencement of Annual Charge.

As soon as may be practical in each year, the Caravella Property Owners' Associations shall send a written bill to each Member stating (i) the amount of the Annual Charge assessed against each such Parcel, stated in terms of the total sum due and owing as the Annual Charge, and (ii) that unless the Member shall pay the Annual Charge with thirty (30) days following the date of receipt of the bill, the same shall be deemed delinquent and will bear interest at the rate of eighteen percent (18) per annum until paid. The amount of said assessment shall not exceed \$1000 per year unless such modification is done in accordance with the procedures for modifying these Restrictions and shall be established annually by the Caravella Property Owners' Associations. The amount of said assessment as to the Developer and/or a Class B Member as described herein shall not exceed \$300 per year per Parcel owned.

### 9.3 Effect of Nonpayment of Assessments; Remedies of Caravella Property Owners' Associations.

If a Member shall fail to pay the Annual Charge within sixty (60) days following receipt of the bill referred to in Section 9.2 hereof, and within thirty (30) days after additional written notice that the Member is delinquent in his payment,

in addition to the right to sue the Member for a personal judgment, Caravella Property Owners' Associations, shall have the right to enforce the lien hereinafter imposed to the same extent, including a foreclosure sale and deficiency decree, and subject to the same procedures, as in the case of mortgages under applicable law, and the amount due by such Member shall include the Annual Charge, as well as the cost of such proceedings, including a reasonable attorney's fee, and the aforesaid interest. In addition, Caravella Property Owners' Associations shall have the right to sell the Property at public or private sale after giving notice to the Member (by registered mail or publication in a newspaper of general circulation in the county where the Parcel is situated at least once a week for three successive weeks) prior to such sale.

#### 9.4 Certificate of Payment.

Upon written demand by a Member, Caravella Property Owners' Associations shall within a reasonable period of time issue and furnish to such Member a written certificate stating that all Annual Charges (including interest and costs, if any) have been paid with respect to any specific Parcel as of the date of such certificate, or if all Annual Charges have not been paid, setting forth the amount of such Annual Charges (including interest and costs, if any) due payable as of such date. Any such certificate, when duly issued as herein provided shall be conclusive and binding with regard to any matter therein stated as between Caravella Property Owners' Associations and any bona fide purchaser of, or lender on, the Parcel in question.

## ARTICLE X IMPOSITION OF CHARGE AND LIEN UPON PROPERTY

### SECTION 10.1 Creation of Lien for Assessments.

The Caravella Property Owner's Association, Inc. in accordance with the provisions of this Declaration shall subject to a continuing lien for assessment levy all Members' Property. The Annual Charge together with interest thereon and the costs of collection thereof including reasonable attorney's fees as herein provided, shall be a charge on and shall be a continuing lien upon the Member's Property against which each such assessment or charge is made.

### 10.2 Personal Obligation of Members.

Each Member, by acceptance of a deed or other conveyance to Member's Property, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to Caravella Property

Owners' Associations or to cause to be paid to Caravella Property Owners' Associations the Annual Charge. Each such assessment, together with interest and costs of collection, including reasonable attorney's fees, in addition to being a lien on the Property as set forth in Section 10.1 above, also shall be the personal obligation of the person or entity who was the Owner of such Member's Property at the time when assessment fell due.

### 10.3 Subordination of Lien to Mortgages.

The lien of any assessment or charge authorized herein with respect to Member's Property is hereby made subordinate to the lien of any bona fide mortgage on such Member's Property if, but only if, all assessments and charges levied against such Member's Property falling due on or prior to the date such mortgage is recorded has been paid. The sale or transfer of any Member's Property pursuant to a mortgage foreclosure proceeding or a proceeding in lieu of foreclosure or the sale or transfer of such Member's Property pursuant to a sale under power contained in a mortgage on such Property shall extinguish the lien for assessments falling due prior to the date of such sale, transferor foreclosure, but Caravella Property Owners' Associations shall have a lien on the proceeds of such sale senior to the equity of redemption of the mortgagor. The foregoing subordination shall not relieve a Member whose Member's Property has been mortgaged of his personal obligation to pay all assessments and charges falling due during the time when he is the Owner of such Property. Caravella Property Owners' Associations may at any time, either before or after the mortgaging of any Member's Property, waive, relinquish or quitclaim in whole or in part the right of Caravella Property Owners' Associations to assessments and other charges collectible by Caravella Property Owners' Associations with respect to such Property coming due during the period while such Property is or may be held by a mortgagee or mortgagees pursuant to such sale or transfer.

## ARTICLE XI USE OF FUNDS

### SECTION 11.1 Use of Funds.

The Caravella Property Owners' Associations shall apply all funds received by it pursuant to these Restrictions, and from any other source, reasonable for the benefit of Property owned by Caravella Property Owners' Associations' Members and specifically to the following uses, unless other uses are approved by 51% of the votes of Members of the Caravella Property Owners' Associations and with the understanding that, at the discretion of Caravella Property Owners' Associations, funds shall be applied to operations and maintenance before being applied to

capital improvements: repayment of principal and interest of any loans of the Caravella Property Owners' Associations; the costs and expenses of Caravella Property Owners' Associations for the benefit of the Property, Owners and residents by devoting the same to the acquisition, operation and subsidizing of such of the following as the Caravella Property Owners' Associations in its discretion, may from time to time establish or provide: any or all projects, services, facilities, studies, programs, systems and properties relating to parks, recreational facilities or services, walkways, curbing, gutters, sidewalks, landscaping; directional and informational signs; streets or roads; street, road and highway lighting, signal and sign facilities; facilities or arrangement for facilities for the collection, treatment and disposal of garbage, trash and refuse; facilities for the fighting and preventing of fires; traffic engineering programs, traffic signals and parking facilities; lakes and dams; beautification projects with the Caravella Property; holiday decorations; Caravella Property Owners' Associations business or social functions; professional fees; casualty, errors and omissions and liability insurance, and such other insurance as may be required by law or otherwise deemed appropriate; facilities and provisions for the security of Members, Members' Property, residents and Caravella Property and general maintenance and clean-up.

The **Caravella Subdivision The Oaks Owners' Association, Inc.** shall be responsible for maintaining the common areas and the island and entryway into said association's portion of the subdivision (Lots 1 – 11 and 33 – 48). The **Caravella Subdivision Family Homes and Garden Homes Owners' Association, Inc.** shall be responsible for maintaining, edging, and cutting the grass between the sidewalks and curbs, and shall be responsible for maintaining the islands and entryway into said association's portion of the subdivision (Lots 1 – 11, 33 – 48 and 12 – 32).

#### 11.2 Obligations of Caravella Property Owners' Associations with Respect to Funds.

The Caravella Property Owners' Associations shall not be obligated to spend in any calendar year all the sums collected in such year by way of Annual Charges or otherwise, and may carry forward as surplus any balances remaining; nor shall Caravella Property Owners' Associations be obligated to apply any such surpluses to the reduction of the amount of the Annual Charge in the succeeding year, but may carry forward from year to year such surplus as the board in its absolute discretion may determine to be desirable for the greater financial security of Caravella Property Owners' Associations and the effectuation of its purposes. The Caravella Property Owners' Associations does not assure that the services

described in Section 11.1 will be provided and nothing herein shall obligate the Caravella Property Owners' Associations or its directors to undertake to provide such services. The Caravella Property Owners' Associations shall provide to all Members of the Caravella Property Owners' Associations an annual accounting of funds expended and balances remaining within on hundred and twenty (120) days after the end of any calendar year, such accounting to be at the expense of the Caravella Property Owners' Associations.

#### 11.3 Authority of Caravella Property Owners' Associations to Contract.

The Caravella Property Owners' Associations shall be entitled to contract, subject to the last sentence of Section 11.4, with any corporation, firm or other entity for the performance of the various undertakings of the Caravella Property Owners' Associations hereunder.

#### 11.4 Authority of Caravella Property Owners' Associations to Borrow Money.

The Caravella Property Owners' Associations shall be entitled to borrow money for the uses specified in Section 11.1, or other uses if approved by 51% of the votes of Members of the Caravella Property Owners' Associations, up to an outstanding principal balance of \$10,000. Any borrowing over such amount shall require the approval of 75% of the Members of the Caravella Property Owners' Associations.

#### 11.5 Authority of Caravella Property Owners' Associations to Make Capital Expenditures.

The Caravella Property Owners' Associations shall be entitled to make capital expenditures for the uses specified in Section 11.1 or other uses as may be approved as provided therein, as limited by the last sentence in Section 11.4.

### ARTICLE X11

#### RIGHTS OF ENJOYMENT IN COMMUNITY FACILITIES

##### SECTION 12.1 Community Facilities.

DEVELOPER may convey or cause to be conveyed to the Caravella Property Owners' Associations, subsequent to the recordation of the Declaration, certain tracts of land within the Caravella Property for park and other recreational and related purposes. The conveyances may restrict the uses of the Property being conveyed. Such tracts, together with such other parts of the Caravella Property Owners' Associations land as the board may by resolution from time to time hereafter designate for use by Members and residents are sometimes hereinafter collectively referred to as "community facilities."

## 12.2 Easement of Enjoyment of Community.

Every Owner, by reason of such Ownership, shall have a right and easement of enjoyment in and to all community facilities, and such easement shall be appurtenant to and shall pass with every Parcel upon transfer. All such rights, easements, and privileges, however, shall be subject to the right of the Caravella Property Owners' Associations to adopt and promulgate reasonable rules and regulations pertaining to the use of community facilities which shall enhance the preservation of such facilities, the safety and convenience of the users thereof, or which, in the discretion of the board, shall serve to promote the best interests of the Owners. The Caravella Property Owners' Associations shall have the right to borrow money, subject to the limitations in Section 11.4, for the purpose of improving any community facility and, in aid thereof, to mortgage the same and the rights of any such mortgagee shall be superior to the easements herein granted and assured.

## 12.3 Suspension of Rights.

The Caravella Property Owners' Associations shall have the right to suspend the right of any Member (and the privilege of each resident claiming through such Member) for any period during which the Annual Charge assessed under Article IX hereof remains overdue and unpaid, or in connection with the enforcement of any rules or regulations relating to such facilities in accordance with the provisions of this Article XII.

## 12.4 Right of Caravella Property Owners' Associations to Convey .

Notwithstanding the rights, easements and privileges granted under this Article XII, the Caravella Property Owners' Associations shall nevertheless have the right and power to convey any Property referred to in Section 12.1 hereof free and clear of all such rights, easements and privileges if such conveyance is to a public body for public use.

## 12.5 Restrictions and Easements Over Open Spaces.

DEVELOPER will either create prior to or as a part of any conveyances to the Caravella Property Owners' Associations, easements and rights of way over and/or affecting the Property conveyed to the Caravella Property Owners' Associations, including but not limited to easements relating to utilities, sewers, construction and roads. Any such conveyance to the Caravella Property Owners' Associations by DEVELOPER shall be subject to all Restrictions, reservations, easements, rights of way and agreements of record.

ARTICLE XIII  
THE ADDITION OF OPEN SPACES

SECTION 13.1 Additions to Open Spaces.

DEVELOPER, of such of its successors and assigns as shall have been specifically granted the right to submit additional Property to this Declaration as set forth in this Article, may from time to time during the development of Caravella, but on or before December 31, 2010, convey or cause to be conveyed additional Property to the Caravella Property Owners' Associations and such Property shall become Open Spaces.

13.2 Permissible Conditions or Restrictions on Additional Open Space.

Property conveyed to the Caravella Property Owners' Associations as additional open spaces may be improved or unimproved land and may be subject to permanent or periodic flooding or may be land under water. The grantor may convey such additional open spaces subject to easements for the construction, installation, maintenance, repair, use and access of roadways, service roads, or utility sewer, or other public service facilities, and subject to the reserved right in favor of a person owning Caravella Property for reasonable use and access to facilitate the development of such Property and subject to other rights of way, easements, Restrictions, and agreements of record.

ARTICLE XIV  
THE SUBMISSION OF ADDITIONAL MEMBER'S PROPERTY

SECTION 14.1 Submission of Additional Member's Property.

DEVELOPER may at any time during the pendency of this Declaration add all or a portion of Caravella Property, along with any additional Property now or hereafter acquired by Developer, to the Property which is covered by this Declaration. Additional Member's Property may be submitted to the provisions of this Declaration by an instrument executed by DEVELOPER, its successors or assigns in the manner required for the execution of deeds. Such instruments shall:

- 14.1.1 refer to this Declaration stating the book or books of the records of Houston County, Alabama, and the page numbers where this Declaration is recorded;
- 14.1.2 contain a statement that such additional Member's Property is conveyed subject to the provisions of this Declaration, or some specified part thereof (as limited by Section 16.4);

14.1.3 contain an exact description of such additional Member's Property;  
and

14.1.4 such other or different covenants, condition and Restrictions as DEVELOPER shall, in its discretion, specify to regulate and control the use, occupancy and improvement of such additional Member's Property.

14.1.5 Upon the recording of such instrument in the appropriate Probate Office of Houston County, Alabama, such additional Property shall be Member's Property and the Owner or Owners of such Member's Property shall thereupon be Members of the Caravella Property Owners' Associations.

## ARTICLE XV GENERAL

### SECTION 15.1 Grantee's Acceptance.

The grantee of any Parcel subject to the coverage of the Restrictions, by acceptance of the deed of other instrument conveying an interest in or title to, or the execution of a contract for the purchase thereof, whether from DEVELOPER or a subsequent Owner of such Parcel, shall accept such deed or other contract upon and subject to each and all of these Restrictions herein contained.

### 15.2 Indemnity for Damages.

Each and every Parcel Owner and future Parcel Owner, in accepting a deed or contract for any Parcel subject to these Restrictions, agrees to indemnify DEVELOPER for any damage caused by such Owner, or the contractor, agent, or employees of such Owner, to roads, streets, gutters, walkways or other aspects of public ways, including all surfacing thereon, or to water, drainage or storm sewer lines or sanitary sewer lines owned by DEVELOPER, or for which DEVELOPER has responsibility, at the time of such damage.

### 15.3 Severability.

Every one of the provisions and Restrictions is hereby declared to be independent of, and severable from the rest of the provisions and Restrictions and of and from every other one of the provisions and Restrictions and of and from every combination of the provisions and Restrictions in this Declaration and shall in no way affect any of the other provisions or Restrictions which shall remain in

full force and effect.

#### 15.4 Right of Developer to Modify Restrictions With Respect to Unsold Parcels.

With respect to any unsold Parcel, DEVELOPER may include in any contract or deed hereinafter made or entered into such modifications and/or additions to these Restrictions as DEVELOPER in his discretion desires; provided however, that these Restrictions may not be modified in any contract or deed to except such Parcel from the assessment provisions of Article IX or to lessen or extend the voting rights as provided in these Restrictions or in the Charter and by-laws of the Caravella Property Owners' Associations.

#### 15.5 Caption.

The captions preceding the various Sections, paragraphs and subparagraphs of these Restrictions are for the convenience of reference only, and none of them shall be used as an aid to the construction of any provision of the Restrictions. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

#### 15.6 Effect of Violation on Mortgage Lien.

No violation of any of these Restrictions shall defeat or render invalid the lien of any mortgage made in good faith and for value upon any portion of the Property; provided, however, that any mortgagee in actual possession, or any purchaser at any mortgagees' or foreclosure sale shall be bound by and subject to these Restrictions as fully as any other Owner of any portion of the Property.

#### 15.7 No Reverter.

No restriction herein is intended to be, or shall be construed as, a condition subsequent or as creating a possibility of reverter.

#### 15.8 Duration and Amendment.

The Restrictions contained in this Declaration shall run with and bind the Property, shall inure to the benefit of and shall be enforceable by DEVELOPER, the Caravella Property Owners' Associations, the Architectural Committees, and the Owner of any residential Parcel included in the Property, their respective legal representatives, heirs, successors and assigns until the 31<sup>st</sup> day of December in the year 2005, after which time said Restrictions shall be automatically extended for successive periods of ten years. This Declaration may not be amended in any respect (except with regard to the annexation of additional Member's Property)

except by the execution of an instrument signed by not less than 75% of the Parcel Owners, which instrument shall be filed for recording in the Probate Offices of Houston County, Alabama, or in such other place of recording as may be appropriate at the time of the execution of such instrument. After December 31, 2010, this Declaration may be amended and/or terminated in its entirety by an instrument signed by not less than 55% of the Parcel Owners which instrument shall be filed for recording in the Probate Office of Houston County, Alabama, or in such other place of recording as may be appropriate at the time of the execution of such instrument.

#### 15.9 Enforcement.

In the event of a violation or breach of any of these Restrictions or any amendments thereto by any Owner, or employee, agent, or lessee of such Owner, then the Owner (s) of residential Parcel (s), the Caravella Property Owners' Associations, DEVELOPER (so long as it is a Member of the Caravella Property Owners' Associations), their successors and assigns, or any party to whose benefit these Restrictions inure shall have the right to proceed at law or in equity to compel compliance with the terms and conditions hereof, to prevent the violation or breach of said Restrictions, to sue for and recover damages or other dues, or take all such courses of action at the same time, or such other legal remedy it may deem appropriate. No delay or failure on the part of an aggrieved party to initiate an available remedy set forth herein shall be held to be a waiver of that party or an estoppel of that party or of any other party to assert any right available to him upon the recurrence or continuation of said violation or the occurrence of a different violation.

Damages shall not be deemed adequate compensation for any breach or violation of any provision hereof, but any person or entity entitled to enforce any provision hereof shall be entitled specifically to relief by way of injunction as well as any other available relief either at law or in equity.

Any party to a proceeding who succeeds in enforcing a restriction or enjoining the violation of a restriction against a Parcel Owner may be awarded a reasonable attorney's fee against such Parcel Owner.

#### 15.10 Certificate of Violation.

In addition to any of the rights or remedies available to the Caravella Property Owners' Associations hereunder or at law or equity, the Caravella Property Owners' Associations shall have the right to file in the Records of Houston County, Alabama, a Certificate or Notice of Violation of these Restrictions (which violation shall include, without limitation, nonpayment of

Annual Charges and/or failure to comply with architectural guidelines) upon failure of a Parcel Owner to correct a violation of these Restrictions with thirty (30) days after written notice of the violation has been given by the Caravella Property Owners' Associations to the Parcel Owner.

15.11 Interpretation by Caravella Property Owners' Associations.

The Caravella Property Owners' Associations shall have the right to construe and interpret the provisions of this Declaration, and in absence of adjudication by a court of competent jurisdiction to the contrary, its construction or interpretation shall be final and binding as to all persons or Property benefited or bound by the provisions hereof.

15.12 Assignment by Caravella Property Owners' Associations.

The Caravella Property Owners' Associations shall be empowered to assign its rights hereunder to any successor nonprofit Membership corporation (herein referred to as the "Successor Corporation") and, upon such assignment the Successor Corporation shall have all the rights and be subject to all the duties of the Caravella Property Owners' Associations hereunder.

15.13 No Waiver.

The failure of any party entitled to enforce any of these Restrictions herein contained shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to such a violation or breach occurring prior or subsequent thereto; provided, however, that approval of plans pursuant to Article II shall be binding on any and all parties as a conclusive determination that such plans are in conformity with these Restrictions.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto caused this instrument to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

The Oaks Group, Inc.

\_\_\_\_\_  
S. A. Jones, President

STATE OF ALABAMA

HOUSTON COUNTY

I, the undersigned notary public, in and for said county and state, hereby certify that S. A. Jones, whose name as President of The Oaks Group, Inc., an Alabama 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 President and with full authority, executed the same voluntarily for and as his free act and as the act of said corporation.

\_\_\_\_\_  
Notary Public

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