


STATE OF ALABAMA)
 :
COUNTY OF MADISON)


20071121000811510 1/15 \$54.75
Madison Cnty Judge of Probate, AL
11/21/2007 03:45:28PM FILED/CERT

SUPPLEMENTARY DECLARATION SUBJECTING
MAGNOLIA VILLAGE AT LAKE FOREST
TO PROTECTIVE COVENANTS OF LAKE FOREST
AND SIXTH AMENDMENT TO THE RESTRICTIVE COVENANTS
OF LAKE FOREST

THIS DECLARATION, made this the 19th day of November, 2007, by Lake Forest Development and Properties, L.L.C., hereinafter defined as “Declarant” and W. Steve Simmons Company, Inc. (“Simmons”).

WHEREAS, Simmons is the owner of certain real property described in Exhibit “A” attached hereto and made a part hereof, hereafter called “the Property”; and

WHEREAS, Declarant desires to subject the Property to the provisions of the Declaration of Protective Covenants for Lake Forest, as recorded in the Probate Office of Madison County, Alabama, as Instrument Number 20060214000093300, as amended (hereinafter described as “the Declaration”); and

WHEREAS, pursuant to Article XIV Section 1 of the Declaration, the Declarant, with the consent of Simmons, may unilaterally subject the Property to the provisions of the Declaration.

NOW THEREFORE, the undersigned Declarant, with the joinder and consent of Simmons, does hereby declare that the Property, including the improvements thereon and hereafter constructed, is hereby subjected to the provisions of the Declaration, as amended, and shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the

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covenants, conditions, restrictions, easements, assessments, and liens set forth in the Declaration, as amended, and shall be entitled to all easements and other rights benefiting property subject to such Declaration, all of which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the Property and all other property now or hereafter subject thereto, and shall be binding on all persons having any right, title, or interest in all or any portion of the property now and hereafter subject thereto, their respective heirs, legal representatives, successors, successors-in-title, and assigns, and shall inure to the benefit of the undersigned Declarant and each and every Owner and occupant of all or any portion thereof.

Notwithstanding the foregoing, the Declaration is hereby amended as follows:

1. The paragraph entitled "Collection of Association Dues:" under "General Rules" on page 3 is hereby amended to read in its entirety as follows:

"The annual collection of Lake Forest Community Association (the "Association") dues will take place October 1st of every year. Association members, considered to be anyone who owns a lot or home, will have 30 days to pay the dues, in the amount of \$600.00 per year, payable to Lake Forest Community Association. Any dues not received by October 31st of the collection year, will incur a \$10.00 per day late fee. Notwithstanding the foregoing, Owners of town home lots within Magnolia Village shall pay dues of \$300 per year and Owners of patio homes in Magnolia Village shall pay dues of \$500 per year. In addition, purchasers of lots within Magnolia Village shall pay an initial capital contribution of \$200 at the time they purchase the lot to the Magnolia Village Committee and shall also pay quarterly landscape maintenance assessments to the Magnolia Village Committee."

2. Article I, paragraph "q" is hereby amended to provide that the term "lot" shall include all lots within Magnolia Village.
3. Article I is hereby amended to add the following definitions for "Magnolia Village" and the "Magnolia Village Committee":

"Magnolia Village Committee" shall mean a committee consisting of three

members which shall, under the direction of the Board, collect dues and assessments from owners of lots within Magnolia Village, manage the landscape maintenance of all lots within Magnolia Village and make decisions regarding and manage the exterior maintenance and repair of townhomes within Magnolia Village. The initial members of the Magnolia Village Committee shall consist of W. Steve Simmons, W. H., Smith, Jr. And Chris Beyl or their successors, as appointed by Simmons from time to time. The initial members and their successors shall serve until such time as 75% of the completed dwellings in Magnolia Village have been sold by the builders to individual homeowners, at which time the owners of townhouse lots within Magnolia Village shall elect two members, and the owners of patio home lots within Magnolia Village shall elect one member. Such members of the Magnolia Village Committee shall serve staggered three (3) year terms, with the election of one new committee member being held in January of each year.

The Magnolia Village Committee shall have the power to obtain a Federal EIN number, establish separate checking, savings and other accounts in which the capital contributions and quarterly maintenance dues shall be deposited and kept segregated from the general funds of the Association, and to file any and all necessary state and federal tax returns.

“Magnolia Village” shall mean Magnolia Village At Lake Forest, as shown on the Plat of Magnolia Village at Lake Forest, recorded as Instrument No. 20071025000747860 in the Office of the Judge of Probate, Madison County, Alabama.

4. Article IV, Section 2 is hereby amended to provide that (i) General Assessments for townhomes within Magnolia Village shall be \$300 per year and General Assessments for patio homes in Magnolia Village shall be \$500 per year, the first year’s General Assessment being pro-rated through October 1st of that calendar year; (ii) purchasers of lots within Magnolia Village shall pay an initial capital contribution of \$200 at the time they purchase the lot to the Magnolia Village Committee; (iii) owners of all lots within Magnolia Village shall pay quarterly landscape maintenance assessments as determined by the Magnolia Village Committee from time to time; and (iv) owners of townhouse lots within Magnolia Village shall pay a quarterly maintenance reserve fee to the Magnolia Village Committee in amounts determined by the Magnolia Village Committee from time to time.

5. Article IV, Section 10 is hereby amended to read in its entirety as follows:

“Section 10

Specific Assessments

The Board shall have the power to specifically assess pursuant to this Section as, in its discretion, it shall deem appropriate. The Board may, from time to time, delegate the power to specifically assess lots within Magnolia Village to the Magnolia Village Committee. Failure of the Board or the Magnolia Village Committee to exercise its authority under this Section shall not be grounds for any action against the Association, the Board or the Magnolia Village Committee and shall not constitute a waiver of the Board’s or the Magnolia Village Committee’s right to exercise it’s authority under this Section in the future with respect to any expenses, including an expense for which the Board or the Magnolia Village Committee has not previously exercised its authority under this section. The Board, or the Magnolia Village Committee, where such power has been delegated, may specifically assess Lots and Residences for the following expenses:

- a.) Expenses of the Association which benefit less than all of the Lots or Residences may be specifically assessed equitably among all of the Lots or Residences which are benefitted according to the benefit received.
- b.) Expenses of the Association which benefit all Lots or Residences, but which do not provide an equal benefit to all Lots or Residences, may be specifically assessed equitably among all Lots or Residences according to the benefit received.

6. Article IV, Section 11 (d) is hereby amended to provide that all Lots or Residences owned by Declarant or Simmons shall be exempt from General Assessments, special assessments and specific assessments and Article IV, Section 11(d) is hereby amended to read in its entirety as follows:

“(d) all Lots and/or Residences owned by the Declarant or Simmons; and”

7. “Construction Policy 1” in Article VII is hereby amended to read in its entirety as follows:

“Each Owner, or its subsequent grantees, successors or assigns, shall begin construction of a single - family home on the lot within 24 months from the date the lot was originally acquired from Declarant or, in the case of Lots within Magnolia

Village, within 24 months from the date the Lot was originally acquired from Simmons. It is deemed that construction shall have begun when a building permit is obtained from the City of Huntsville by the Owner, or his subsequent grantors, successors or assigns.”

8. “Construction Policy 4” in Article VII is hereby amended to read in its entirety as follows:

“A dumpster must be placed on the lot prior to the start of framing and remain until construction is completed. The dumpster must be emptied often enough to maintain the construction site in a neat condition. All construction sites must be cleaned of any/all trash at the end of each day, to keep trash from blowing onto other lots or throughout the Community. In the case of town homes or patio homes within Magnolia Village, multiple buildings may utilize the same dumpster provided that the construction area of each building is maintained in a neat condition. Except as noted above, there will be no exceptions to this rule.”

9. Article IX, Section 1 is hereby amended to provide that the Association’s Maintenance Responsibilities include maintaining all the Common Areas within Magnolia Village including, but not limited to, irrigation and utility bills for the Common Areas.

10. Article X, Section 2 is hereby amended to read in its entirety as follows:

“Section 2
Beginning Date for Construction of Homes

Each Owner, or its subsequent grantors, successors or assigns, shall begin construction of a single family home on the lot within two (2) years from the date the lot was originally acquired from the Declarant or, in the case of Lots within Magnolia Village, within two (2) years from the date the Lot was originally acquired from Simmons. It is deemed that construction shall have begun when a building permit is obtained from the City of Huntsville by the Owner, or his subsequent grantors, successors or assigns. If the Owner fails to begin construction of a single family home on the lot within said time, the Declarant, or Simmons, in the case of Lots withing Magnolia Village, shall have the right or option, but not the obligation, to repurchase the lot at the same purchase price as originally paid by the Owner or the Owner’s grantee to Developer or Simmons.”

11. Article X, Section 3 is hereby amended to read in its entirety as follows:

“Section 3
Installation of Sidewalk

Should Owner, his subsequent grantees, successors or assigns, not begin construction of a single family home on the lot within 12 months, or 1 year, from the original date of acquiring the lot from Declarant or, in the case of Lots within Magnolia Village, from Simmons, it will be the Owner's, or his subsequent grantees, successors or assigns, responsibility to install a sidewalk on the lot in accordance with Article VII, Construction Policy 2."

12. Article X, Section 20, is hereby amended to allow patio home and town home Lots within Magnolia Village to place fences nearer to the front lot line than the rear most corner of the dwelling when necessary for privacy upon written consent of the ARC.

13. Article X, Section 39 b.) is hereby amended to read in its entirety as follows:

"b.) Except for patio homes and town homes within Magnolia Village, which may have front entry garages, all dwellings shall have side or rear entry garages, unless approved in writing by the ARC."

14. Article X, Section 39 d.) 9 is hereby amended to provide that Magnolia Village shall require town homes to have at least 1,500 square feet of heated space and patio homes to have at least 1,800 square feet of heated space. Accordingly, Article X, Section 39 d.) 9 is hereby amended to read in its entirety as follows:

"9. Magnolia Village Subdivision:
Town Homes 1,500
Patio Homes 1,800"

15. The two paragraphs under Exhibit B, Section 2, "Overall Design, Exterior Material and Color" are amended to provide that these paragraphs shall not apply to town homes or patio homes in Magnolia Village. Nothing contained in this paragraph 15 shall be deemed to exempt lots within Magnolia Village from having to obtain ACR approval in accordance with the Declaration.

16. The paragraph entitled "Materials" under Section 2 of Exhibit B is hereby amended to provide that this Section shall not apply to town homes or patio homes in Magnolia Village. Nothing

contained in this paragraph 16 shall be deemed to exempt lots within Magnolia Village from having to obtain ACR approval in accordance with the Declaration.

17. Notwithstanding anything contained in the paragraph entitled “Trees” under Section 2 of Exhibit B, the following shall be the required tree and shrub plantings in Magnolia Village:

“Front Yard:

Patio Homes:	1 tree/25 plants
Town Homes:	0 trees/15 plants

Rear Yard:

Patio Homes:	1 tree
Town Homes:	0 trees”

Notwithstanding the foregoing, all landscaping will comply with City of Huntsville zoning ordinances regulating landscaping.

18. Notwithstanding anything contained in the Declaration to the contrary, the Declaration is hereby amended to add the following additional covenants, restrictions and easements which shall be applicable to all lots within Magnolia Village:

a) Maintenance

- (i) The Magnolia Village Committee is responsible for routine landscape maintenance of each lot within Magnolia Village, including grass cutting, edging, fertilizing, weed control and such other services as are specified in the maintenance contracts executed by the Magnolia Village Committee from time to time. No landscaping shall be changed without the approval of the Magnolia Village Committee and the ARC.

- (ii) The Magnolia Village Committee is responsible for exterior painting of all townhouses within Magnolia Village and the Magnolia Village Committee, with the approval of the ARC will make decisions on exterior paint maintenance as required from time to time. Neither the Association nor the Magnolia Village Committee is responsible for routine maintenance such as caulking and cleaning.
- (iii) The Magnolia Village Committee is responsible for replacement of the roof materials such as shingles, roof felt, and OSB/plywood for which the Magnolia Village Association shall specifically establish and reserve a fund for replacement from the quarterly maintenance reserve fees paid by the owners of townhouse lots within Magnolia Village. Neither the Magnolia Village Association nor the Association is responsible for damage, repair or replacement due to weather, fire, casualty, accident, negligence, or neglect. Damages to interiors as a result of roof leaks are NOT the responsibility of the Magnolia Village Committee or the Association.
- (iv) Each Owner shall keep his or her lot within Magnolia Village and the dwelling thereon in good order and repair in a manner and with such frequency as is consistent with good property management practices.
- (v) No Owner of any lot within Magnolia Village shall modify the dwelling on his or her lot by adding a room or rooms, changing the roof lines, adding decks, materially changing or altering the color or making any other alteration in the exterior appearance of the dwelling without the prior written approval

of the ARC and the Magnolia Village Committee and any license or consent required from any governmental department or agency having jurisdiction of the work proposed to be performed upon the dwelling.

(vi) Each Owner, in acquiring title to his or her respective lot, within Magnolia Village acknowledges that the decor, color scheme, and design have been selected in such a manner to be consistent and harmonious with other dwellings and Improvements within Magnolia Village and agrees to maintain his or her respective lot and dwelling in such a manner as to maintain and perpetuate visual harmony within the Magnolia Village.

b) Townhouse Easements. Simmons intends to construct townhouses on some lots within Magnolia Village, and construction of such dwellings may require that certain eaves, roof overhangs, brick veneers, siding and other architectural features and building materials encroach upon or hang over contiguous lots. Accordingly, there is hereby created, granted and reserved as an appurtenance to each townhouse lot within Magnolia Village, a perpetual easement over and across each lot within Magnolia Village, contiguous thereto for all such encroachments and overhangs, as well as for all encroachments and overhangs resulting from any natural movement or settling of any such dwelling. In addition, there is hereby created, granted and reserved to the Owner or Owners of each townhouse lot a license and right of entry across contiguous townhouse lots as may be reasonably needed to maintain and repair such encroaching or overhanging structures. If any dwelling shall be damaged or destroyed, the Owner or Owners thereof shall be permitted to repair and reconstruct

such dwelling with encroachments and overhangs not more intrusive than those existing at the time of such damage or destruction and thereafter said license and right of entry shall continue in effect. In addition, should Simmons, or any affiliate or successor thereof develop additional residential subdivisions in the future on property adjacent to Magnolia Village, there is hereby reserved to Simmons and his affiliates, successor or assigns, an easement for ingress and egress over and across Magnolia Village as may be necessary for the construction and development of the adjoining property. There is also reserved an easement for drainage as may be required resulting from the topography or lay of the contiguous land.

The undersigned Declarant and W. Steve Simmons Company, Inc. shall cause this Supplemental Declaration and Amendment to be recorded in the Probate Office of Madison County, Alabama, and this Supplementary Declaration and Amendment shall thereupon be effective.

Any capitalized terms not otherwise defined herein shall have the meaning set forth in the Declaration.

[SIGNATURES ARE ON THE FOLLOWING PAGE]

Prepared by: Paul B. Seeley, Lanier Ford Shaver & Payne P.C.,
200 West Side Square, Huntsville, AL 35801 (256) 535-1100

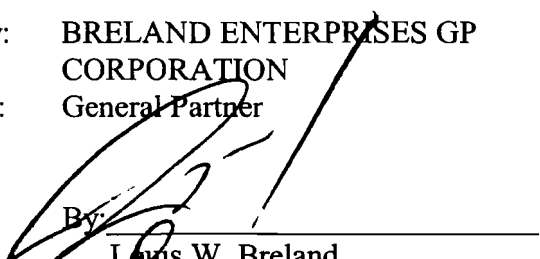
IN WITNESS WHEREOF, the undersigned Declarant and W. Steve Simmons Company, Inc. have caused this supplemental declaration to be executed as of the day and year first above written.

DECLARANT:

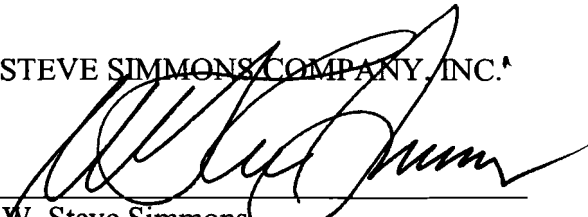
LAKE FORREST DEVELOPMENT AND
PROPERTIES, L.L.C., a Delaware limited liability
company

By: BRELAND ENTERPRISES DE, L.P.
Its: Sole Member

By: BRELAND ENTERPRISES GP
CORPORATION
Its: General Partner

By: 
Louis W. Breland
Its: President

W. STEVE SIMMONS COMPANY, INC.*

By: 
W. Steve Simmons
Its: PRESIDENT

NOTIFICATION

Banc Corp. South, being the holder of a mortgage on the real property described on Exhibit "A", does hereby ratify, confirm and consent to the execution and recording of this Supplementary Declaration Subjecting Magnolia Village Subdivision to Protective Covenants of Lake Forest, and all amendments thereto for the purpose of giving full force and effect to the restrictions imposed upon the property by this instrument.

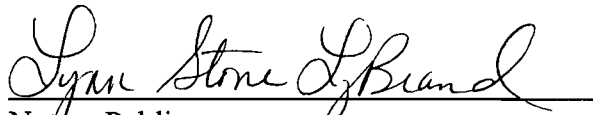
BANC CORP. SOUTH

By: Kelley Z Maddox
Its: AVP

STATE OF ALABAMA)
 :
COUNTY OF MADISON)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Louis W. Breland, as President of Breland Enterprises GP Corporation, as General Partner of Breland Enterprises DE, L.P., as Sole Member of Lake Forrest Development and Properties, L.L.C. (the "Company") 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, as such President and with full authority, executed the same voluntarily for and as the act of said Company.

Given under my hand and official seal this the 19th day of November, 2007.




Notary Public
My Commission Expires: June 6, 2011

STATE OF ALABAMA)
 :
COUNTY OF MADISON)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that W. Steve Simmons, as PRESIDENT of W. STEVE SIMMONS COMPANY, INC., an Alabama corporation, 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, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this the 20 day of November, 2007.



Notary Public
My Commission Expires: 9/24/2011

COUNTY OF MADISON)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Kelley L. Maddox, whose name as AVP of Banc Corp. South, a(n) MS corporation, 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, (s)he, as such AVP and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this the 20th day of NOV., 2007.



Notary Public

My Commission Expires: 9/24/2011

EXHIBIT "A"

Property Description

All lots and real property encompassed within Magnolia Village at Lake Forest, as more fully shown on Plat of "Magnolia Village at Lake Forest" dated October 2, 2007, and recorded October 25, 2007, as Instrument No. 20071025000747860, in the Office of the Judge of Probate of Madison County, Alabama.

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