

DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS **045362**
OF
ELM TREE TRACE TOWNHOMES HOMEOWNERS ASSOCIATION

THIS DECLARATION, made on the date hereinafter set forth by John G. Gann and Company, an Alabama Corporation, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the City of Huntsville, County of Madison, State of Alabama, which is more particularly described as:

All that part of the South East Quarter of Section 6, Township 5 South, Range 1 East of the Huntsville Meridian.

Particularly described as beginning at a point that is located South 87 degrees 51 minutes West 1,291.65 feet, North 02 degrees 56 minutes 17 seconds West 4,207.73 feet, and North 87 degrees 03 minutes 43 seconds East 297.5 feet from the center of the North Boundary of the South East Quarter of Section 7, Township 5, Range 1 East, said point of true beginning is further described as being located on the South right-of-way margin of Kohler Road, thence from the true point of beginning and along said right-of-way margin North 87 degrees 03 minutes 43 seconds East 147.75 feet to a point located on the West right-of-way margin of N. C. & St. Louis Railroad Spur Tract, thence South 03 degrees 15 minutes 17 seconds East 1,227.00 feet along said right-of-way to a point, thence leaving said right-of-way South 87 degrees 03 minutes 26 seconds West 252.03 feet to a point, thence North 02 degrees 56 minutes 17 seconds West 927.00 feet to a point, thence North 87 degrees 03 minutes 43 seconds East 97.5 feet to a point, thence North 02 degrees 56 minutes 17 seconds West 300.00 feet to the point of beginning and containing 6.33 acres more or less.

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 the parties 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 Elm Tree Trace Townhomes Homeowners Association, 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 hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

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STATE OF ALA. MADISON CO.
I CERTIFY THIS INSTRUMENT
WAS FILED

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Section 4. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows:

See Attached Exhibits A, B, C, D, E, F, G, H, I, and J
for property description.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 6. "Declarant" shall mean and refer to John G. Gann and Company, an Alabama Corporation, its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area 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 charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) the right of the Association to suspend the voting rights and right to use of the recreational facilities 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;

(c) the right of the Association to dedicate or transfer all or any part of the Common Area 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.

(d) the rights of individual owners to the exclusive use of parking spaces as provided in this Article.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

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 with the exception of the Declarant and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any lot, all such persons shall be members.

The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The 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 on the happening of either of the following events, whichever occurs earlier:

- (a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or
- (b) on January 1, 1985.

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 therefor, whether or not it shall be so expressed in such deed, it 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 hereinabove provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land 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 recreation, health, safety and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area, and of the homes situated upon the Properties.

Section 3. Maximum Annual Assessments. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be One Hundred Twenty and No/100 (\$120.00) Dollars per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than 3% above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above 3% by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the 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 Area, 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 who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 days nor more than 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. If quorum is not obtained at such second meeting, a third meeting may be called and a quorum at such meeting shall be fifty percent (50%) of the total votes entitled to be cast. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. 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 8. 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 6 percent 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 Area or abandonment of his Lot.

Section 9. 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.

Section 10. Exempt Property. All properties dedicated to, and accepted by, a local public authority and all properties owned by a charitable or nonprofit organization except from taxation by the laws of the State of Alabama shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

ARTICLE V
EXTERIOR MAINTENANCE

The Association shall provide no exterior maintenance upon each Lot which is not owned by the Association. Association shall maintain all alleys and perimeter fences (but not fences or parking spaces in individual lots). An easement shall be and is hereby granted to the Association across any and all lots to perform such maintenance.

In the event an owner of any Lot in the Properties shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Board of Directors, the Association, after approval by two-thirds (2/3) vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon said parcel and to repair, maintain, and restore the Lot and the exterior of the buildings and any other improvements erected thereon. The cost of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject.

In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, or guests, or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such lot is subject.

ARTICLE VI
PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and the decision shall be by a majority of all the arbitrators.

ARTICLE VII

ARCHITECTURAL CONTROL

No building, fence, all 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 the Board of Directors of the Association; or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE VIII

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. 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. Invalidity of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with 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 percent (75%) of the Lot Owners. Any amendment must be recorded.

Section 4. Annexation. Additional residential property and Common Area may be annexed to the Properties with the consent of two-thirds (2/3) of each class of members. However, additional land may be annexed by the Declarant within three (3) years of the date of this instrument provided that the FHA and the VA determine that the annexation is in accord with the general plan heretofore approved by them.

Section 5. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

Section 6. An easement shall be and is hereby granted over and across all roofs of individual units for maintenance to adjoining units.

Section 7. In the event of destruction of the improvements upon any lot by fire or other hazard, if the owner shall not rebuild within six (6) months of such destruction then the Association shall have the option to purchase such lot at the fair market value thereof, to be determined by the average of three (3) appraisals made by three (3) appraisers licensed to do business in Huntsville, Madison County, Alabama.

Section 8. The City of Huntsville, Alabama, shall have and is granted an easement over and across all alleys within this development but said City of Huntsville shall not be responsible for any maintenance or upkeep of such alleys.

Section 9. No inoperative motor vehicles may be kept on any lot. All boats, trailers, and cycles, if placed on any lot must be kept neatly covered and maintained.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 14th day of November, 1980.

JOHN G. GANN & COMPANY,
An Alabama Corporation

BY: [Signature]
Its President

STATE OF ALABAMA)
 :
COUNTY OF MADISON)

I, the undersigned, a Notary Public, in and for said County and State, hereby certify that JOHN G. GANN, whose name as President of JOHN G. GANN & COMPANY, an Alabama Corporation, is signed to the foregoing Instrument and who is known to me, acknowledged before me on this date 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 the said Corporation, on the day the same bears date.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this the 14th day of November, 1980.

[Signature] (SEAL)
NOTARY PUBLIC
My Commission Expires: 1-21-84

THIS INSTRUMENT WAS PREPARED BY:
Donald B. Weir, Jr.
Attorney at Law
206 Eustis Ave., SE
Huntsville, Alabama 35801
205/533-7111

BOOK

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"EXHIBIT A"

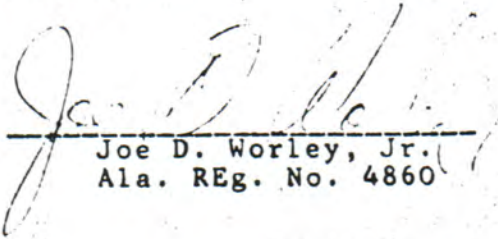
Description for John Gann

Elm Tree Trace Townhomes
Over-all Tract

STATE OF ALABAMA
MADISON COUNTY

All that part of the South East Quarter of
Section 6, Township 5 South, Range 1 East of the Huntsville
Meridian.

Particularly described as beginning at a point
that is located South 87 degrees 51 minutes West 1,291.65
feet, North 02 degrees 56 minutes 17 seconds West 4,207.73
feet, and North 87 degrees 03 minutes 43 seconds East 297.5
feet from the center of the North Boundary of the South
East Quarter of Section 7, Township 5, Range 1 East, said
point of true beginning is further described as being located
on the South right-of-way margin of Kohler Road, thence from
the true point of beginning and along said right-of-way mar-
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to a point located on the West right-of-way margin of N. C.
& St. Louis Railroad Spur Tract, thence South 03 degrees 15
minutes 17 seconds East 1,227.00 feet along said right-of-
way to a point, thence leaving said right-of-way South 87
degrees 03 minutes 26 seconds West 252.03 feet to a point,
thence North 02 degrees 56 minutes 17 seconds West 927.00
feet to a point, thence North 87 degrees 03 minutes 43 second
East 97.5 feet to a point, thence North 02 degrees 56 minutes
17 seconds West 300.00 feet to the point of beginning and
containing 6.33 acres more or less.


Joe D. Worley, Jr.
Ala. REG. No. 4860

September 22, 1980

4860