

STATE OF ALABAMA  
COUNTY OF MADISON



2006072600046280 1/6 \$32.25  
Madison Cnty, Judge of Probate, AL  
07/26/2006 11:38:29AM FILED/CERT

**COVENANTS, CONDITIONS AND  
RESTRICTIVE COVENANTS**

**KNOW ALL MEN BY THESE PRESENTS** that whereas **Sunrise Valley Development, Inc.**, hereinafter referred to as "Declarant", is the owner of all the lands described on the plat of Sunrise Valley Phase II, as same appears of record as instrument number 20060719000478320 in the Office of the Judge of Probate of Madison County, Alabama; and

**WHEREAS**, Declarant has mortgaged said property to Superior Bank, which joins the execution of this instrument to accomplish the purposes set forth herein; and

**WHEREAS**, Declarant desires to fix and establish certain restrictions, covenants and conditions as to the use and enjoyment of all of the lots or parcels of land located within said development, in order to establish a uniform plan for the orderly development, improvement and enjoyment of said lands; and

**WHEREAS**, Declarant desires to impose said restrictions, covenants and conditions before any of said lands are sold.

**NOW, THEREFORE**, the undersigned Declarant does by these presents hereby establish and subject the above described lands to the following covenants, restrictions, reservations and conditions which shall constitute covenants running with the land and shall be binding upon and inure to the benefit of the Declarant, its successors and assigns who shall become owners of said lands or any part thereof, to-wit:

1. No lot shall be used except for residential purposes.
2. No building shall be erected, altered, placed or permitted to remain on any lot other than one single-family dwelling. This shall not be construed to prevent necessary outbuildings as hereinafter authorized and provided.
3. No building shall be located on any lot nearer to the front lot line than 35 feet or nearer to any side street line than 25 feet. No building shall be located nearer than ten (10) feet to an interior lot line. For the purposes of this covenant, eaves, steps and driveways shall not be considered as part of the building, provided, however, that this shall not be construed to permit any portion of a building on a lot to encroach on another lot. In the event Declarant shall decide, in its sole and absolute discretion, that strict enforcement of the setback lines and distances or other provisions contained within these Covenants and Restrictions would work unnecessary hardship in any specific case, then Declarant shall have the right to waive said requirements by filing notice in writing of such waiver in the Office of the Judge of Probate of Madison County, Alabama.
4. No dwelling shall be erected or placed on any lot having an area of less than 18,000 square feet.
5. No one-story residence shall be erected upon or allowed to occupy any lot unless the area of the main structure, exclusive of open porches, attached garages or carports, be not less than 2300 square feet of heated space. No one and one-half or two-story residence shall be erected upon or allowed to occupy any lot unless the area of the main structure, exclusive of open porches, attached garages or carports, be not less than 2500 square feet of heated space. Each residence shall at a minimum include a side or rear entry two (2) car garage. Construction of a garage for more than three (3) cars shall require the express written approval of Declarant.
6. No construction shall be commenced upon any building, or alteration thereof, upon any lot until and unless the building plans and specifications showing the name and address of the owners and builder and the plat plan showing the proposed location and elevation of such building upon said lot has been approved in writing by Declarant or its designated representative, as to the conformity of the proposed building with Declarant's plans for orderly development of the Subdivision and the harmony of the exterior design with that of existing structures and as to location of the proposed structure with respect to topography and finish grade elevation.

7. Each residence shall be at least ninety percent (90%) brick, stone or stucco. All chimneys must be constructed entirely of brick, stone or stucco. No Exterior Insulation & Finish Systems (EIFS), or synthetic stucco, shall be installed on any structure in the Subdivision.
8. Any outbuilding must be approved by the Declarant or its successor as herein provided. Further, any outbuilding shall be of similar design and construction as the residence, with no metal, plastic or frame structures allowed. Any outbuilding installed without the written approval of Declarant or its successors shall be removed immediately upon demand by Declarant or its successors.
9. Minimum roof pitch will be 6/12, with architectural or dimensional asphalt shingles.
10. No propane tank shall be placed upon any lot, whether same should be exposed, concealed or buried.
11. No residence shall be occupied until such time as a certificate of occupancy has been issued for said structure by the appropriate governmental authority. Further, no dwelling shall be occupied unless utility services, including electrical, water and septic services are installed, operational, and activated.
12. Upon completion of construction, and thereafter, all owners shall sod their front yards with grass, and owners of all corner lots shall also sod their side and rear yards. Rear yards enclosed by fences may be exempted from this requirement by Declarant. Each lot owner must maintain a grass cover over all ditches that may run across and/or adjoin their lot. At all times, the owner of the lot is responsible for keeping all ditches that may run across their lot and/or adjoin their lot free and clear of all trash, debris, and loose dirt, and maintaining ditches as per Madison County specifications and any engineering plan for subject subdivision. Ditches are to be kept so that water may flow freely through them.
13. Each lot owner is responsible for installing his driveway pipe so that same does not impair drainage for any part of the Subdivision. Driveway pipe must be of such size, type, design and placement, as required by the project engineer, as indicated on the subdivision plat, or as required by any controlling governmental authority. In the event the driveway tile or drainage ditch are not installed or maintained in compliance with the drainage plan for the Subdivision, or for any reason cause drainage problems, the lot owner shall be responsible for the correction of any such problem immediately upon notification of same. In the event the lot owner fails to remedy the problem within ten (10) days from notification of same, Declarant or its successors may make any required repair or alteration and charge the lot owner with the cost of same. Lot owner shall pay the amount so charged, together with any reasonable costs of collection, including attorney fees and court costs.
14. Each owner shall install, together with the installation of a driveway, a brick or stone head wall and retaining wall to keep the area surrounding the driveway from washing out.
15. No retaining wall shall be allowed upon any lot unless and until the design of same, together with the any resulting alterations to surrounding ground elevations has been approved in writing by Declarant or its designated representative. Any such retaining wall shall be constructed entirely of brick, with no block or stucco allowed. Any retaining wall installed without the written approval of Declarant or its successors shall be removed immediately upon demand by Declarant or its successors.
16. No fence shall be allowed other than wooden privacy fences, six (6) feet in height. No construction of any fence, nor alteration thereof, shall be commenced upon any lot until and unless the fence has been approved in writing by Declarant or its designated representative. All such fencing shall be maintained with regular staining or sealing of the wood, and by replacement of warped, rotted or damaged boards. Any fence installed without the written approval of Declarant or its successors shall be removed immediately upon demand by Declarant or its successors.
17. All mailboxes shall require the approval of Declarant or its successor, as to size, type, design, material and placement.

18. Upon completion of construction, and thereafter, each lot owner shall plant and maintain a minimum of two (2) trees in the front yard of the residence. Each of said trees shall have a minimum trunk diameter of three (3) inches. Further, the owner shall plant and maintain a minimum of twelve (12) evergreen shrubs at the front of the residence. Each of said shrubs shall be a minimum two (2) gallon size. Owners of corner lots shall also plant and maintain such number of evergreen shrubs, of the same or greater size, along the side wall of the residence facing any side street, so as to maintain an appearance in keeping with that of the front of the residence. All lots shall be maintained in a neat and orderly manner, with no overgrown plants, grasses or vegetation.

19. In the event the Declarant shall adjust the lot lines or further subdivide, each of the resulting new lots or units shall be considered one lot for the purpose of these restrictions and these restrictions shall apply the same as if said tract or unit had been originally platted as one lot on the subdivision plat. Should the owner of two adjacent lots desire to build and maintain a single dwelling on the combined lots, said owner must obtain approval of Declarant in writing, including approval of any relocation or extension of any easements. The side lot restriction shall apply to the side lot lines of the combined lot. If the approval of any governmental agency or office is required, said approval shall be obtained prior to the commencement of construction, and shall be the sole responsibility of the owner.

20. In addition to those easements for installation and maintenance of utilities and drainage facilities which are reserved on the subdivision plat, there shall also be easements of five (5) feet in width inside each boundary line of each lot. The easement area of each lot shall be used and enjoyed by the owner of the lot, except Declarant reserves for itself and any utility companies serving said Subdivision the easements and right-of-way as shown on said Subdivision plat and as herein described for the purpose of planning, inspection, constructing, maintaining and repairing a system or systems of electric lighting, electric power, telegraph and telephone line or lines, gas, sewer, cable television or any other utility Declarant sees fit to install in, across, or under said easements.

21. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two and six feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points 25 feet from the intersection of the street lines. No tree shall be permitted to remain within such distances of such intersection unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

22. No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other outbuilding shall be used at any time as a residence either temporarily or permanently. No temporary structure of any kind, occupied or unoccupied shall be permitted upon any lot during construction on said lot without the prior written approval of Declarant. Declarant reserves to Declarant, or its assigns, the right to erect, place and maintain such facilities in or upon any portions of the Subdivision still owned by Declarant, or its assigns, as in Declarant's sole discretion may be necessary or convenient while selling lots, selling or constructing residences and constructing other improvements upon the Subdivision. Such facilities may include, without limitation, sales and construction offices, storage areas, model units, signs and portable toilet facilities.

23. No sign of any kind shall be displayed to the public view on any lot except one sign of not more than four (4) square feet advertising the property for sale or rent, or any combination of signs, totaling not more than twelve (12) square feet, used by a builder to advertise the property during the construction and sales period.

24. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.

25. No profession, business, home industry, church, school, kindergarten or educational enterprises shall be conducted on any lot. No owner shall hold or host any sale of property on any lot, including yard sales, garage sales, tag sales, estate sales, or other sales by whatever name known, on more than one day in any 365 day period. Same shall not commence until 8:00 a.m. or continue after 5:00 p.m. No owner or occupant of any dwelling erected on any lot shall ever rent or lease rooms, but such restrictions shall not be construed to prevent the rental of an entire residence to a family unit nor the employment of live-in domestic servants.

26. No noxious or offensive trade or activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become any annoyance or nuisance to the neighborhood. However, it is hereby recognized that the reasonable levels of traffic, noise, dirt in the streets, and activity associated with the construction of homes in the subdivision is normal activity and not to be considered noxious, offensive or prohibited.

27. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred, or maintained for any commercial purpose and do not present a danger or nuisance.

28. No house trailer, mobile home, camper, recreational vehicle, boat or similar equipment or vehicle shall be parked or stored on any road, street, driveway, parking lot, yard or lot located in the subdivision for any period of time, except in the garage of each lot. No trucks larger than three-fourths (3/4) ton GVW and no tractors or other excavating machinery shall be parked or stored on any road, street, driveway, parking lot, yard or lot located in the subdivision, except in said garage, for any period beyond the period of construction on the lot.

29. No radio antenna, television antenna, satellite dish, or other antenna of any type shall be erected or maintained in the front yard of any lot. Any satellite dish installed on any house or lot shall be installed on the side or rear of said house, and shall be shielded or screened so that it is not visible from the street in front of said lot or from the side street, if a corner lot.

30. These restrictions shall not extend to cover any other property owned or controlled by Declarant, in particular any which may be shown on the plat of this or any other Subdivision and designated or described as "For Information Only", "Not Platted", or "Future Development" or words or terms of similar meaning. These restrictions do not apply to the parcel described on the plat as "Tract A", or the parcel lying immediately East of Lots 1 and 2, of Block 5. In addition, these restrictions shall cease to apply to any lot or lots rezoned by the controlling governing authority to other than single family residential use. Declarant reserves the right in its sole discretion, so long as the Declarant's rights and authority to act under these Covenants and Restrictions have not been terminated as provided herein, to revise the subdivision plat or to amend, revise, or abolish any one or more of the restrictions contained herein.

31. Any approval by Declarant, or Declarant's successors, as required by any of the terms and conditions of these covenants and restrictions shall be requested, and either granted or denied, in writing. In the event Declarant or its successors shall fail to approve or disapprove any request within thirty (30) days after such request has been made, approval shall not be required, the related covenants and restrictions shall be deemed to have been fully complied with and Declarant's approval can be presumed. Failure of Declarant or its successors to respond in writing, in one or more or all cases, shall not in any way mitigate either the requirement to submit, or the right of Declarant or its successors to approve or disapprove such plans and specifications in subsequent cases.

Declarant reserves to itself, and its successors, the broad discretion in approval of any plans and specifications submitted, and such approval or disapproval thereof shall be final and binding upon the applicant and upon all owners of lots benefited by these covenants. The approval required by the covenants shall be by Declarant, Sunrise Valley Development, Inc., or its successors.

32. Except as provided herein, all rights and responsibilities specifically reserved or imposed upon Declarant or its representatives under the terms of these restrictions, (other than those which exist by virtue of Declarant being an owner of a Subdivision lot), shall terminate upon the filing by Declarant of written notice to that effect in the Office of the Judge of Probate of Madison County, Alabama. Declarant may, in its sole discretion, except from said termination such authority as may be beneficial to the continued application, management and enforcement of these restrictions, and may, in said filing, designate a committee of at least three (3) representatives to exercise such continuing authority hereunder. In the event of a vacancy on said committee, the owners of a majority of the lots in the Subdivision may appoint a successor member.

33. These covenants are to run with the land and shall be binding on all persons claiming under them for a period of thirty (30) years from the date of these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by the owners of a majority of the lots has been recorded, agreeing to alter, modify or amend said covenants in whole or in part.

34. The owner of any lot, or any successor owner, shall commence construction of a single family residence on subject property within one (1) year from the date title to said lot is transferred out of Sunrise Valley Development, Inc. Proof of the commencement of construction shall consist of actual commencement, or the filing of a construction mortgage in favor of any commercial lending institution. The failure of the Owner to commence construction within one year shall entitle Sunrise Valley Development, Inc., in its sole discretion, to re-purchase said lot for the price originally paid to Sunrise Valley Development, Inc., for the sale of same. Sunrise Valley Development, Inc., shall be entitled to compel the owner to reconvey the lot to Sunrise Valley Development, Inc., or its successors or assigns, free and clear of all liens and encumbrances. Sunrise Valley Development, Inc., may file suit in the Circuit Court of Madison County, Alabama, to compel said reconveyance, and shall also recover from the owner all attorney's fees, court costs and any other costs associated with the enforcement of this provision. This right to repurchase shall expire if not exercised within two years after title is transferred out of Sunrise Valley Development, Inc.

35. Enforcement of these restrictions shall be by proceeding at law or in equity against any person or party violating or attempting to violate any covenant, either to restrain violation or to recover damages. Declarant, its successors, or any lot owner shall have the right to enforce same, and shall recover reasonable attorney's fees and costs of court associated with the enforcement, or attempted enforcement, of these restrictions, from any person, entity or party in violation of same. However, no such action shall lie against Declarant.

36. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

IN WITNESS WHEREOF, Sunrise Valley Development, Inc., has caused this instrument to be executed by its duly authorized officers, on this the 21<sup>st</sup> day of July, 2006. Further, Superior Bank, has caused these covenants to be executed by its duly authorized officer on the date indicated below.

SUNRISE VALLEY DEVELOPMENT, INC.

  
Michael Darwin, President

  
Miles L. Brandon, Secretary/Treasurer

SUPERIOR BANK

  
Darlina Bray, Senior Vice-President

STATE OF ALABAMA  
COUNTY OF MADISON

Before me, the undersigned authority, a Notary Public in and for said County and State, personally appeared Michael Darwin, and Miles L. Brandon, whose names as President and Secretary/Treasurer respectively, of Sunrise Valley Development, Inc., are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of said instrument, they, in their capacity aforesaid, being duly authorized, executed the same voluntarily as and for the act of said corporation on the day the same bears date.

GIVEN under my hand and official seal, on this the 21<sup>st</sup> day of July, 2006.

  
Notary Public  
My Commission Expires: 3-15-2010

STATE OF ALABAMA  
COUNTY OF MADISON

Before me, the undersigned authority, a Notary Public in and for said County and State, personally appeared Dalina Bray, whose name as Senior Vice-President of Superior Bank, 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 said instrument, she, in her capacity aforesaid, being duly authorized, executed the same voluntarily as and for the act of said bank on the day the same bears date.

GIVEN under my hand and official seal, on this the 21<sup>st</sup> day of July, 2006.

  
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Notary Public

My Commission Expires: 3-15-2010

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This instrument prepared by:  
Miles L. Brandon  
922-B Merchants Walk  
Huntsville, Alabama 35801