

RESTRICTIVE COVENANTS

15 PAGES

GEORGIA, LOWNDES COUNTY

SEE # 28, PAGE 11

WHEREAS, AUDUBON HEIGHTS, LLC, of Lowndes County, Georgia, is the owner and/or developer of the following described property, to-wit:

All that tract or parcel of land situate, lying and being in Land Lot 90, of the 12th Land District of Lowndes County, Georgia, in the City of Hahira, and consisting of Lots 73, 74, 75, 76, 77, 78, 79, 80, 81, 82 and 83, of that certain subdivision known as "Audubon Heights Phase I", according to that certain map or plat of survey thereof recorded in Plat Cabinet "A", at Page 1886, in the office of the Clerk of the Superior Court of Lowndes County, Georgia, to which map or plat of survey and the record whereof reference is hereby made for all purposes in aid of description.

WHEREAS, the said owner is developing the above-described property for sale as residential lots; and

WHEREAS, in order to insure the orderly development of the said property, it is deemed necessary that the use of each and all of the future subdivision lots (hereinafter called lot or lots) be restricted in the manner and to the extent hereinafter set forth;

NOW, THEREFORE, for and in consideration of the premise and of the benefits to be derived by AUDUBON HEIGHTS, LLC, and each and every subsequent owner of any of the lots in said subdivision, the said AUDUBON HEIGHTS, LLC, does hereby set up, establish, promulgate and declare the following protective covenants to apply to all of said lots and to all persons owning said lots, or any of them, hereafter; these protective covenants shall become immediately effective and run with the land and shall be binding on all persons claiming under and through the said present owner until twenty (20) years after the date hereof.

1. No lot or lots shall be re-subdivided so as to create any lot of less area than the area shown for each lot on the recorded subdivision plat and no lot shall be otherwise changed in size or changed in shape unless approved by the developer or the Architectural Control Committee.

2. No lot shall be utilized for other than residential purposes. No dwelling house shall be erected or located upon any of the said lots other than a single family dwelling having at least 1400 square feet of floor space, exclusive of porches, garages, stoops and covered walkways or breezeways. No dwelling house shall be erected, altered, placed or permitted to remain on any lot other than one detached single family dwelling not to exceed two and one-half stories in height. Each dwelling shall have at least a two (2) car garage with doors. No open carports are allowed.

3. No building of any kind shall be erected, located or maintained upon any lot nearer than the lot setback line as shown on the recorded subdivision plat of survey.

4. No lot (including the buildings, facilities and improvements which may be situated thereon) shall be used or occupied by other than the owner thereof or one lessee or tenant of the entire lot; provided, however, that when used and occupied by an owner, lessee or tenant of the whole of such a lot, such lot may also be used and occupied by the members of the household, servants and guests of such owner, lessee or tenant. No trailer, camper, motor home, tent, shack, garage, barn or other outbuilding or temporary structure upon any lot shall be used or occupied as a residence or for dwelling purposes, either temporarily or permanently.

5. All building plans for any dwelling house, garage, fence, wall or other building or structure of any kind to be erected upon any lot, and all plans for construction of driveways, pools and other improvements, including materials and exterior colors, exterior lighting, landscaping plans, and the proposed location for such improvements upon any lot, and any ~~changes after approval, any remodeling, reconstruction, alteration or addition to any dwelling,~~ garage, fence, wall, building, driveway or other structure upon any lot in the premises, shall require the approval, in writing, of the Architectural Control Committee. Prior to beginning the construction of any driveway, dwelling, building, fence, wall, improvement or other structure

whatsoever, or remodeling, reconstruction, or altering of any driveway, improvement or structure upon any lot, the lot owner or the person or persons desiring to erect, construct or modify the same shall submit to the Architectural Control Committee two (2) complete sets of building plans, site plans and specifications for the proposed dwelling, garage, building, fence, wall or other improvement, and two (2) complete sets of driveway, landscaping, swimming pool or other site plans, as is applicable, which is planned to be erected, constructed or modified. No improvement or structure of any kind, for which the plans, elevations and specifications have not received the written approval of the Architectural Control Committee, and which do not fully comply with the approved plans and specifications, shall be erected, constructed, placed, or maintained upon any lot. Approval of plans and specifications shall be evidenced by a written endorsement on the plans and specifications, a copy of which shall be delivered to the owner of the lot upon which the proposed dwelling, garage, fence, wall, driveway, swimming pool, improvement or other structure is planned prior to the beginning of construction. No changes or deviations in or from the plans and specifications as approved shall be made without the prior written consent of the Architectural Control Committee. The Architectural Control Committee shall not be responsible for any structural defects in the plans or specifications, nor in any building, improvement or structure erected according to the plans and specifications. All building plans, specifications, as well as plans for other improvements, whether for new construction or remodeling and any and all other required documents or notices to be delivered to the Architectural Control Committee, shall be delivered to Ben H. Moye at Post Office Box

505, Hahira, Georgia, 31632. Any construction approved by the Architectural Control Committee shall be completed within twelve (12) months from the date of approval unless otherwise authorized or extended in writing by the Architectural Control Committee and any

such construction not completed within such time frame shall incur a penalty of \$25.00 per day for which a lien shall arise and be created in favor of the Architectural Control Committee and against the lot owner for the full amount chargeable to the lot. Any such amount shall be due and payable within thirty (30) days after the owner has been billed by the Architectural Control Committee. The initial Architectural Control Committee shall consist of Ben Moye, Tina Moye and Andy Brindger. All decisions shall be determined by a majority vote of the members. In the event that any member should die or resign, then the remaining members of the Architectural Control Committee may appoint another person to serve as the replacement member.

During construction the lot and work area shall be kept in a clean manner and the owner and/or contractor shall not allow debris, trash, garbage, or unused construction material to lie around and be unsightly on the premises and in the event any contractor or lot owner shall fail or refuse to keep the premises in a good and clean manner then the Architectural Control Committee may enter upon the premises and clean the same at the expense of the lot owner and such entry shall not be deemed a trespass. In the event of such removal, a lien shall arise and be created in favor of the Architectural Control Committee and against the lot owner for the full amount chargeable to such lot for such removal and such amount shall be due and payable within thirty (30) days after the lot owner is billed by the Architectural Control Committee for the same, and if not paid within such time frame, then a lien shall be recorded at the Lowndes County Courthouse and the lot owner shall be responsible for said sum plus attorney's fees and court costs.

6. No lot or residence located thereon shall be used for any commercial purpose whatsoever. No "Home Occupation" business, as defined by the City of Habira and Lowndes County Zoning Ordinances, shall be allowed either with or without a special exception granted

by the Zoning Board of Appeals. No commercial vehicle shall be parked or kept upon any such street or lot except while being loaded or unloaded or while engaged in work upon such lot. No commercial vehicles, boats, tractors, lawn mowers, golf carts, three or four wheelers, wave runners, jet skis, motor homes, campers, motorcycles, trailers, semi tractor/trailers, construction or like equipment, or any mobile or recreational vehicles or stationary trailers of any kind shall be parked on any street or lot unless kept in a garage completely enclosed. No junk, disabled or inoperative vehicle shall be parked, stored or kept upon any lot or street. Additionally, no automobiles or trucks or any other vehicles shall be parked on the street(s) within the subdivision, except for those making deliveries to residences within the subdivision, except in designated areas for temporary guest parking on Redbird Place, Robin Place, Eagle Place and Hummingbird Court.

7. No horses, hogs, cattle, poultry or other livestock or animals of any kind shall be kept upon any lot described herein, except cats and dogs not exceeding two (2) in number of each, on any one lot, and other usual household pets; provided, however, that no cat, dog or other pet shall be kept upon any such lot unless the premises wherein the same shall be kept, shall be maintained at all times in a clean and sanitary condition and reasonably free of noxious or repugnant odors, flies, fleas and other insects. Furthermore, any dog or dogs must be kept in the rear yard, within a fenced area and the material, design, placement and construction must first be approved by the architectural control committee.

8. The operation of mini-bikes, go-carts, three and four wheelers, and motorcycles of any type on any of the said lots is hereby prohibited.

9. No lot shall be used, in whole or in part, for the storage of rubbish of any character

whatsoever, nor for the storage of any property or thing that will cause such lot to appear in an unclean or untidy condition, or that will be obnoxious to the eye; nor shall any substance, thing or material be kept upon any lot that will emit foul or obnoxious odors, or will cause any noise that will or might disturb the peace, quiet, comfort and serenity of the occupants of the surrounding property. No weeds, underbrush or other unsightly growth shall be permitted to grow or remain upon any lot, and no refuse pile, unused motor vehicles or unsightly objects shall be allowed to be placed or remain on any lot or street. In the event any lot owner in the subdivision shall fail or refuse to keep the premises free from weeds, underbrush, refuse piles, unused motor vehicles, or other unsightly growths or objects, then the Architectural Control Committee may enter upon the premises and remove the same at the expense of the lot owner and such entry shall not be deemed a trespass. In the event of such removal, a lien shall arise and be created in favor of the Architectural Control Committee and against the lot owner for the full amount chargeable to the lot for such removal, and such amount shall be due and payable within thirty (30) days after the lot owner is billed by the Committee for the same, and if not paid within such time frame, then a lien shall be recorded at the Lowndes County Courthouse and the lot owner shall be responsible for said sum plus attorney's fees and court costs.

10. Each lot owner shall also be required to mow and maintain their lot in a clean, orderly and well manicured condition up to their respective street curbing (well manicured condition meaning that the grass shall not exceed 4" in height). In the event any lot owner in the subdivision should fail or refuse to keep the grounds free from weeds, underbrush and other than ~~in a clean and orderly condition~~, then the Architectural Control Committee may enter upon the premises and clean the same and/or manicure the same at the expense of the lot owner and such entry shall not be deemed a trespass. In the event of any such entry a lien shall arise and be

created in favor of the Architectural Control Committee and against the lot owner for the full amount chargeable to the lot for such removal, and such amount shall be due and payable within thirty (30) days after lot owner is billed by the committee for the same, and if not paid within such time frame, then a lien shall be recorded at the Lowndes County Courthouse and the lot owner shall be responsible for said sum plus attorney's fees and court costs.

11. Each and every conveyance of any of the said lots shall be subject and subordinate to a perpetual easement in, to and over the said lot as shown upon the recorded plat of the said subdivision for utility purposes and/or drainage purposes and/or greenbelt purposes, which easement shall be for the purpose, and shall authorize the developer, its successors and assigns or licensees to utilize said easement areas for the purpose of constructing, developing, maintaining, and utilizing in, on and over such easement areas, drainage ditches, and other drainage facilities, sewer lines, water lines, electric power and communication lines, and any and all other utility facilities, together with such poles, conduits, wires, guy wires, pumps, transformers, and other necessary or desired equipment and appurtenances thereof; and by virtue of said easement the said present owner and its successors, licensees and assigns, shall have free and unrestricted right of ingress and egress to said easement areas and in and over the same for the purpose of constructing, developing, maintaining, using and protecting such facilities.

12. The right is specifically reserved by the owner/developer, its successors and assigns, to amend, alter, and add to the conditions, restrictions, and limitations imposed herein by subsequent protective covenants, or in any deed to any lot in said subdivision, provided that such condition, restriction or limitation shall be in conformity with the general purposes of the restrictions herein imposed.

13. No delay or omission on the part of the developer, or by any lot owners in the

subdivision, in exercising any rights, power or remedy herein provided, in the event of any breach of the covenants, conditions, reservations and restrictions herein contained, shall be construed as a waiver thereof or acquiescence therein, and no right of action shall accrue, nor shall any action be brought or maintained by anyone whatsoever against the developer for or on account of its failure to bring any action on account of any breach of these covenants, conditions, reservations, or restrictions, or for imposing restrictions herein which may be unenforceable by the developer.

14. The covenants, provisions and restrictions herein set forth shall run with the land, and once they become effective with respect to any lot upon the sale and conveyance of such lot as aforesaid, they shall be binding upon such lot and the purchaser or purchasers thereof and all persons claiming under any such purchaser for the period or periods of time above prescribed herein.

15. Should any future owner of one or more of said lots, or any person claiming under such owner, violate or attempt to violate any of the covenants or restrictions herein set forth, it shall be the lawful right of the said present owner or any other person then owning one or more of the lots described herein to institute and prosecute appropriate proceedings at law or in equity against the person or persons violating or attempting to violate any such covenants or restrictions either to prevent such violation or a continuation thereof, and to recover attorney's fees, court costs and damages resulting from such violation, or both.

16. Should any one or more of these said covenants or restrictions be or become invalid or unenforceable, the remaining covenants and restrictions herein set forth shall not be affected thereby but shall remain in full force and effect in accordance with the terms hereof.

17. No sign of any kind, except temporary signs including yard sale signs previously approved by the Architectural Control Committee, shall be displayed to the public view on any lot, except one sign of not more than five square feet advertising the property for sale or rent or a sign used by a builder to advertise the property during the construction and sale.

18. 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 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.

19. No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

20. The purpose of the Architectural Control Committee is to protect the character and integrity of Audubon Heights Subdivision as established by the developer by controlling any and all construction within the development, including, but not limited to controlling construction as to the quality of workmanship and materials, harmony of external design with existing structures and as to location with respect to topography and finished grade of elevation. The Committee's approval or disapproval of the plans of any proposed improvement as required in these covenants shall be in writing. All decisions of the Committee shall be binding. Written approval is required for any approval as set forth under these protective covenants. Neither the members of the Committee nor their designated representatives or successors shall be entitled to any compensation for services performed pursuant to this covenant. Neither the members of the Committee, nor their designated representatives or successors, shall be liable for any action taken pursuant to the authority vested in them by these protective covenants or their failure to take any

action pursuant thereto, and each and every owner of any of the lots in the subdivision, by acceptance of the deed to such lot, agrees to this limitation of liability and to release the members of the Committee and their designated representatives and successors from any and all liability and from any and all claims, demands, and causes of action whatsoever that the lot owner may have or may hereafter have arising out of or resulting from any actions taken or the refusal to take any action by the Committee pursuant to the authority vested in them by these covenants.

21. Each and every lot must be sodded, sprigged or seeded before occupancy.

22. All driveways and/or parking pads shall be paved with concrete or asphalt. No residence shall be occupied prior to the driveway or parking pad being completed with the hereinabove stated material.

23. No dish antenna or satellite receiving antenna may be constructed or used on any lot or on any structure built on a lot without the written approval of the Architectural Control Committee.

24. No garage or yard sales shall be permitted on any lot or street in the subdivision, unless approved in writing by the Architectural Control Committee prior to the installation of the same.

25. No metal buildings, storage sheds, outbuildings, or other nonconforming structure shall be allowed on any lot without the written approval of the Architectural Control Committee, who must also approve the design and exterior. Under no circumstances shall any such structure be located closer than the applicable set back lines.

26. Basketball goals, either temporary or permanent, as well as all implements or structures used for entertainment, athletic or such other related purposes are prohibited in the front yard. This will be strictly enforced.

27. All fencing and fenced in areas must first be approved by the Architectural Control Committee as to the height, material used, design and location thereof.

28. For the purposes of maintaining the planted entrance island area and other island areas in the subdivision; pond; general traffic control; initial landscaping provided by the developer; security; and all common community areas and services of every kind and nature required or desired within the subdivision for the general use and benefit of all lot owners, each and every lot owner, by accepting a deed for any lot in the subdivision, shall become a member of the homeowner's association formed and/or incorporated by the developer for these purposes, and shall be subject to the obligations of the duly enacted by-laws and rules of said homeowner's association. The association will be organized and will exist for the benefit of all property owners in the subdivision, and shall have two classes of voting membership. Class A members shall be all owners with the exception of the developer, and shall be entitled to one vote per lot or parcel owned on all matters pertaining to the Association including election of officers and directors. If a lot is combined with a portion or all of another lot, the result is a parcel, which is entitled to one vote. The foregoing is not intended to include persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the owner's membership. No owner, whether one or more persons, shall have more than one vote per lot or parcel. Membership shall be appurtenant to and may not be separated from ownership of any lot. The rights and privileges of membership in addition to the right to vote shall include the right to hold office. The Class B member(s) shall be the developer and shall be entitled to three (3) votes for each Class A vote. The Class B membership shall cease to exist and be converted to Class A membership upon the happening of either of the following events, whichever shall occur earlier:

A. 90% of the total developed property obtained by deeds as recorded in Deed Book 1852, at Page 209; Deed Book 1297, at Page 28; and Deed Book 1852, at Page 207; of the deed records of the Clerk of the Superior Court of Lowndes County, Georgia, has been sold or conveyed by the Developer;

B. On January 1, 2015.

By virtue of purchasing one or more lots, each owner and every occupant of a lot agrees to abide strictly by the by-laws, rules and regulations which will be passed from time to time by the Association, the use restrictions, as they may be lawfully amended or modified from time to time, and with the covenants, conditions, and restrictions set forth in this Declaration and in the deed to his or her lot, if any, and to promptly pay any and all dues or special assessments which may be levied from time to time by the Association for the maintenance, protection and operation of any amenities or common areas on the Property owned or operated by the Association. The dues, which may be levied by the Association, shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefits, and enjoyment of the owners. The Association may impose fines or other sanctions, which shall be collected as provided herein for the collection of dues and assessments. Failure to comply with this declaration, the By-Laws or the rules and regulations shall be grounds for an action to recover sums due or for damages or injunctive relief, or both, maintainable by the Association or in a proper case by an aggrieved owner. The failure of the Association or any owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter.

Each owner shall be personally liable for his or her portion of the dues or assessments while he or she is the owner of a lot. In the event that any owner fails to pay any dues or assessments, which are passed and levied by the Association on all owners, the unpaid dues

and/or assessments shall be a lien upon the property of such owner. The lien may be further evidenced by the recording of an affidavit of the President of the Association, setting forth the unpaid amount and the description of the property against which the dues and/or assessments were levied. Any unpaid sums shall bear interest at the rate of twelve percent (12%) per annum until paid.

After the commencement of dues and special assessments, the Developer, and its successors and assigns, covenants, and agrees to pay the full amount of the dues and special assessments provided herein for each lot it owns having an occupied residence thereon; provided, however, each lot owned by Developer which does not have an occupied residence thereon shall not be subject to any special assessments or dues provided for herein.

29. The homeowner's association shall own the planted island areas and other designated common areas and/or green areas in the subdivision and the pond located in the subdivision. All property owned by the homeowner's association shall be maintained by the homeowner's association for the benefit of the owners of each lot located in the development and the expenses of maintaining all of the common area property or property owned by the homeowner's association shall be shared by the members of the homeowner's association in accordance with the duly enacted by-laws and rules of the said association.

30. Any liens imposed by the Architectural Control Committee shall be enforceable in the same manner as hereinabove provided for the collection of liens levied by the homeowner's association.

31. No mail boxes shall be installed until they are approved by the Architectural Control Committee.

32. A special tax lighting district may be established with residents paying for

lighting with annual property taxes. The amount is based on City of Hahira ordinances and policies regarding the same. Until the special lighting district is established, the residents will pay on a pro-rata basis, their share of the power bill to the developer.

33. Exterior flood lights shall not be permitted to shine directly on a neighbor's residence or common areas and must be angled or shielded so as to illuminate the area around the residence itself.

34. No living tree of more than five inches in diameter shall be cut on any of the lots without the written consent of the Architectural Control Committee. Any lot owner who violates this provision through their own acts or through their agents' acts shall pay a \$2,000.00 penalty per tree to the Architectural Control Committee, plus any court costs, attorney fees, or other costs incurred by the Architectural Control Committee or the developer or its successors or assigns, or other lot owners or parties that may bring any action against the violator to enforce the provisions of this paragraph.

35. The initial dues payable to the homeowner's association shall be \$15.00 per month beginning on the first day of the first quarter following the purchase of a lot by an owner (other than the developer) and thereafter on the first day of each quarter until modified, changed, or amended by the Association.

36. Controlled burning will not be allowed on any lots in the subdivision.

37. In the event that the developer or the Architectural Control Committee or any person or entity having the right to do so, should file a lawsuit in order to enforce the provisions as set out in this Agreement or to collect any sums due hereunder, then the prevailing party shall be entitled to recover reasonable attorney's fees and the costs of such litigation from the non-prevailing party.

IN WITNESS WHEREOF, the owner and/or developer has caused this instrument to be executed on its behalf and its corporate seal to be affixed hereto on this 23rd day of May, 2002.

AUDUBON HEIGHTS, LLC

BY: _____ (SEAL)
Ben H. Moye, Manager/Member

Signed, sealed and delivered
in the presence of:

Witness

NOTARY PUBLIC FOR GEORGIA