

# **RESTRICTIVE COVENANTS TO COLONIAL HILLS UNIT SIX**

KNOW ALL MEN BY THESE PRESENTS, that JMH Development Company, Inc., an Alabama Corporation, (hereinafter referred to as the "Developer") as the owner of the real property of that certain Subdivision situated in the County of Mobile, State of Alabama, described as follows:

COLONIAL HILLS UNIT SIX, according to plat thereof recorded in Map Book 125 Page 82, in the Office of the Judge of Probate of the Probate Court of Mobile County, Alabama.

(hereinafter sometimes referred to as "Property") do hereby amend, fix, establish and declare the following Restrictive Covenants relating to the use and development of all lots in said Subdivision. These Restrictive Covenants shall be recorded in the Office of the Judge of Probate of Mobile County, Alabama.

## **RESTRICTIVE COVENANTS**

1. **PROPERTY COVERED:** The real property which is and shall be held conveyed, transferred, sold, used and occupied subject to the liens, charges, rights, limitations, conditions, covenants, reservations, easements and restrictions with respect to the various portions thereof set forth in the various clauses and paragraphs of this declaration and the restrictive covenants contained herein, are ALL ALOTS@ contained within the Property. ALots@ are the numbered parcels of property shown on the recorded plats of the above referred property, known as COLONIAL HILLS UNIT SIX.

2. **PURPOSE OF DECLARATION:** The purpose of this Declaration is to insure the best use and most desirable development and improvement of the Property for residential purposes only; to protect the Developer and future owners of Lots against such improper use of the Property as to depreciate the value of their Lot; to preserve, so far as practicable, the natural beauty of said Property; to guard against the erection thereon of poorly designed structures or structures built of improper or unsuitable materials; and, to prevent abusive offensive, unsightly, or other improper use of said Lots; and in general to protect and enhance the value of investments made by purchasers of Lots therein.

3. **USE:** All lots in the tract shall be known and described as residential lots. No structure shall be erected, altered, placed or permitted to remain on any residential building Lot other than one detached single family dwelling not to exceed two and one-half (12) stories in height, and a private garage for not more than three cars, and other out-buildings incidental to residential use.

4. **DWELLING REQUIREMENTS:** The ground floor of the main structure, exclusive of one-story open porches and garages, shall not be less than 1700 square feet of air conditioned space in the one-story structure and 800 square feet in the case of a one and one-half, two, or two and one-half story structure. All material and workmanship must be substantially equal to or exceed the minimum Mobile County building requirements and applicable building codes.

5. **ARCHITECTURAL CONTROL:** No building, outbuilding or fence shall be

erected, placed, or altered on any Lot in this subdivision until building plans, specifications, and plot plan showing the location of such buildings or fences have been approved in writing as to conformity and harmony of external design with existing structures in the subdivision and as to location of the building or fence with respect to topography and finished ground elevation, by a committee composed of John M. Howard, Randall B. Smith and W. Lindsay Walker. In the event said committee, or its designated representative, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, such approval will not be required and this covenant will be deemed to have been fully complied with. Neither the members of such committee, nor its designated representative, shall be entitled to any compensation for services pursuant to this covenant. The Developer reserves the specific right and authority to appoint all members of the Committee until such time as the Developer has sold and conveyed all Lots within Unit Six and all Lots within units added, if any, to Colonial Hills, however, upon the occurrence of such events, the Committee shall be appointed by the Board of Directors for the Association (as hereinafter defined).

6. **BUILDING LOCATION:** No building shall be located on any Lot nearer to front Lot line or nearer the side street line than the minimum building set back lines, except that on corner Lots, one side of the house may be set back a lesser amount with the written approval of the Architectural Control Committee. No building shall be located on any Lot nearer than five (5) feet to the side Lot line; no building shall be located on any Lot nearer than ten (10) feet to the rear Lot line. For the purpose of this covenant, eaves, steps, porches and garages are considered as part of the building. The Architectural Control Committee shall have the power by majority vote to grant exceptions to these locations as it deems appropriate.

7. **CONSTRUCTION PERIOD:** Each Lot owner shall be responsible for maintaining the structural integrity of the asphalt wing-gutter in front of the individual Lot during building construction. Construction equipment access to the Lot should be limited to the permanent driveway location; thereby confining wing-gutter damage to the driveway location. Wing-gutter repair must be effected during driveway installation. The Builder or Developer assumes no responsibility for wing gutter damage after completion of the home.

8. **LOT AREA AND WIDTH:** No residential structure shall be erected or placed on any Lot, which has area of, or width of, less than as shown on the recorded maps of said subdivision, except a subdivision submitted to and approved in writing by the City of Mobile Planning Commission. Any re-subdivision shall be subject to the approval of a majority of the Architectural Control Committee, as set out in Paragraph 5. An owner may construct a residence on two adjoining lots providing the minimum building setback line requirements are satisfied.

9. **SEWAGE DISPOSAL:** No cesspool or other individual sewage system shall be constructed or utilized on the Property. All homes shall be required to connect to available City Water and Sewer System.

10. **GARBAGE AND REFUSE DISPOSAL:** No Lot shall be maintained as a dumping ground for rubbish. Trash, garbage or other waste shall be kept in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean sanitary condition. No homeowner shall use any portion of his Lot for the collection or storage of trash, garbage, old parts, old equipment, or other unsightly articles. Construction dumpsters are for construction dumping only. Dumping of household items is not permitted and may be subject to fine.

11. **NUISANCES:** No noxious or offensive trade or activity shall be carried on upon any Lot, nor shall anything be done thereon which may become an annoyance, or nuisance, to the neighborhood. No Lot shall be allowed for such activities as parking trailers, inoperable motor homes, cars, or trucks not in use or for repairs of same. Parking of all vehicles shall be limited to the paved areas in yard. Parking on grass is not permitted without written approval of Architectural Control Committee. Any exterior clothes hanging apparatus shall be located in the rear portion of property, unless such location is approved in writing by the Architectural Control Committee.

12. **TEMPORARY RESIDENCE:** No trailers, basement, tent shack, shack, garage, or other outbuildings, including mobile homes, erected temporarily or permanently, shall be used as a residence. Mobile trailers, mobile homes, campers, and/or trailers and boats may be kept on the premises, only if kept in the rear yard portion of the Lot behind the dwelling area in a manner approved by the Architectural Control Committee.

13. **OIL AND MINERAL OPERATIONS:** No oil, exploration, drilling, oil development operations, oil refining, quarrying, mining or excavation operations of any kind shall be permitted upon or below any Lot, nor shall oil wells, tanks, tunnels, mineral explorations or shafts be permitted upon or below 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. Oil, gas or other highly flammable materials, other than that stored in small containers or household use, shall not be stored in barrels or drums on any Lot.

14. **SIGNS:** No sign of any kind shall be displayed to the public view on any Lot more than five (5) square feet in size, advertising the property for sale or for rent; except during the construction period, one (1) additional sign may be erected by the builder and a security service sign shall also be allowed when applicable.

15. **ANIMALS:** No animals or fowl shall be domiciled in the subdivision for commercial purposes. This shall not prohibit the ownership of cats, dogs, or other domesticated pets for owners' pleasure. Pot Bellied Pigs or swine of any kind are prohibited. Permanent domestic pets should be limited to three (3) per household.

16. **FENCES:** No fences may be erected nearer to the front lot line than the front corner of the house on said Lot, unless specifically affirmed in writing by the Architectural Control Committee. In the case of a corner Lot, no fence shall be erected on the front or side Lot line closer to the street than the house, without written permission by the Architectural Control Committee.

17. **SWIMMING POOLS:** No swimming pool may be installed without a privacy fence shielding such pool from the street. Above ground pools shall be permitted only with the written approval of the Architectural Control Committee.

18. **EASEMENTS:** All easements shown on the recorded plat of the subdivision are hereby adopted as a part of these restrictions, and all Lots in the subdivision shall be subject to such easements. The undersigned owner of the subdivision reserves unto itself and its successors and assigns the right and easement, but not the obligation, to construct, install, maintain, repair and replace power, gas, sewer, telephone, and other utility lines, equipment and facilities and drainage ditches, in, on, over and under the streets and road and easements shown on the recorded plat of the subdivision. No warranty, either expressed or implied is made by the Developer, or subsequent builders as to the design, adequacy, or continuing function of easements, streets, sewer system, utilities, drainage, or other improvements which have been constructed and approved by the subdivision

design engineers or proper governing authorities and utility companies.

19. **SATELLITE DISHES - TELEVISION & RADIO ANTENNAS:** All outside radio and television antennas shall be installed in such a way as not to be offensive. Antennas (not to exceed 18 inches) shall be placed on the back side of the chimney where possible; otherwise, they shall be placed on the back portion of the roof. Any satellite dish mounted in the yard and not on the home must be concealed behind a privacy fence or hedge such that the satellite dish will not be obviously visible from any street, or from the adjacent Lots, and said satellite dish shall not be located in a front yard or a street side yard of a corner Lot. Yard satellite dishes with diameters of 36 inches or more shall not be allowed without permission from the Architectural Control Committee.

20. **HOMEOWNERS ASSOCIATION:** A Homeowners' Association called Colonial Hills/Bakerfield Home Owners' Association, Inc. (the Association)@, has been formed for the Lot Owners which has articles of incorporation recorded in real property book 4324 page 1979 of the Mobile County, Alabama Probate Court Records. All Lot Owners of Colonial Hills Unit Six shall be members of the Association. Except as otherwise provided for in this document the Articles of Incorporation and By-Laws of Colonial Hills/Bakerfield Home Owners' Association, Inc., shall be adopted by each Lot Owner in Colonial Hills Unit Six. Among the purposes of such organization shall be the establishment of rules and policies with respect to the use and maintenance of all Common Areas (including but not limited to all detention areas). The Association's responsibilities shall include maintenance of any landscaping or fencing, maintenance of decorative lights within the Common Areas, if any, and maintaining all Common Areas as shown on the recorded plat; and, to pay all costs (including utility charges) incurred in the maintenance and landscaping of said Common Areas (including plants, irrigation systems, and subdivision name signs). All Lot Owners of future units in Colonial Hills, if any, shall be members of the Association, at the sole option of the Developer. Each owner of any Lot, and its heirs, successors, transferees, and assigns, by acceptance of a deed to such a Lot, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to abide by and be governed by the Articles of Incorporation of the Association and its By-Laws and to pay to the Association the following.

- a. Annual General Assessments as herein described; and,
- b. Special Assessments for capital improvements, repairs or other expenses which exceed the Annual General Assessment as described; and all such assessments, together with interest thereon and the costs of collection thereof, including a reasonable attorney's fee as hereinafter provided, shall be the personal obligation of such Lot owner and shall be a charge and a lien on each Lot and improvements against which each such assessment is made.

Each year the Board of Directors of the Association shall estimate the cost of maintenance of the Common Areas and such other expenses as it deems necessary for its operations. Such estimate shall be deemed the Annual General Assessment. The Annual General Assessment levied by the Association shall be used exclusively for the maintenance, repair, replacement, beautification, landscaping, property taxes and costs of operation of the Common Areas (including, but not limited to, the maintenance and repair of the Detention Area(s), other property owned by the Association, insurance (as determined by the Board of Directors for the Association), and, if any: irrigation systems, property signage and lighting (not maintained by public utility companies), and such other expenses related thereto as deemed necessary, such as for example the expense of clerical assistance incurred in maintaining the records and operation of the Association.

From time to time, the Association may determine the cost of necessary capital improvements, major repairs and necessary expenses not provided for in the Annual

**General Assessment.** Such costs shall be deemed a Special Assessment.

Except as herein stated, each Lot of the said subdivision, whether improved or unimproved, shall be assessed its pro rata share of the Annual General Assessment and any Special Assessment in accordance with the formula set forth in the Articles of Incorporation of the Association. The following property, individuals, partnerships, or corporations subject to this Declaration shall be exempted from the assessments, charges and lien created herein; the Developer (JMH Development Company, Inc., an Alabama Corporation, and its affiliated companies and its affiliated builders, including John Howard Homes, Ltd., H&P Limited, and any other John Howard builders designated) and any Lot(s) owned by the Developer; however, until the Developer is no longer an Owner of a Lot within the Property, the Developer or its affiliated builders, will maintain at Developer's expense, the liability insurance thereon, on any vacant Lot or home under construction, owned by the Developer or affiliated builder.

Each Lot Owner, except as stated above, shall commence to pay the Annual General Assessment in the amount existing from time to time as determined by the Board of Directors upon the first event to occur of:

1. First (1<sup>st</sup>) day of the month following the purchase of a completed home on a Lot; or,
2. One Hundred Eighty (180) days after the purchase of a Lot.

Upon the first of the above described events occurring, the Lot Owner will then owe and pay to the Association a pro rata amount of the assessment the existing based upon the time remaining during which such assessment shall be in effect.

A vote of two-thirds of the Board of Directors of the Association shall fix the Annual General Assessment and any Special Assessment upon the basis provided above. The Board shall set the date each such assessment shall become due and may provide for the collection of the assessments in monthly, quarterly or annual installments, provided, however, that upon default in the payment of any one or more installments, the entire balance of said assessment may, at the option of the Board, in its sole discretion, be accelerated and declared to be due and payable in full.

The lien for unpaid assessments shall be effective from and after the time of recording in the Records of the Office of the Judge of Probate, Mobile County, Alabama, a claim of lien stating the Lot number, the name of the record owner, the amount due and the date when due. Such claim of lien shall include only sums which are due and payable when the claim of lien is recorded and shall be signed and certified by an officer of the Association.

Upon full payment of all sums secured by the lien, the party making payment shall be entitled to a recorded satisfaction of lien. All Association liens shall be subordinate to any lien for taxes, the lien of any mortgage of record and any other lien recorded prior to the time of recording of the claim of lien filed by the Association.

Upon any voluntary conveyance of a Lot, the grantor and grantee of such Lot shall be jointly and severally liable to the Association for all unpaid assessments accrued up to the date of such conveyance without prejudice to the right of the grantee to recover from the grantor any such amounts.

Any Lot owner, prospective purchaser of a Lot, or holder of a mortgage or other lien on any Lot may, at any time, obtain from the Association a certificate showing the amount of unpaid assessments pertaining to such Lot. The Association shall provide such

certificate within ten (10) days after request therefor. Any person, other than the Lot owner, at the time of issuance of any such certificate, may rely upon such certificate, and his liability for unpaid assessments shall be limited to the amounts set forth in such certificate.

Any entity, its successors and assigns, obtaining title to a Lot as a result of foreclosure of a first mortgage or vendor's lien shall not be liable for assessments which became due prior to the foreclosure. Such unpaid share of assessments shall be deemed to be an expense of the Association to be collected as part of a future Special Assessment.

Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at a percentage rate established by resolution of the Board of Directors with notice of such rate to be given to each Lot owner in a manner to be designated by said Board.

The Association may bring an action at law against the owner personally or may foreclose the lien created by the terms hereof in accordance with the statutes and laws of the State of Alabama then in effect for the foreclosure of real estate mortgages and shall have the right to sell said property at public outcry at the front door of the Courthouse of Mobile County, for cash to the highest bidder, giving notice of the time, place and terms of said sale, together with a description of said property to be sold, by an advertisement published once a week for three (3) consecutive weeks in a newspaper published in said county; to make proper conveyance to the purchaser in the name of the Lot owner; and the proceeds of said sale to apply first to the payment of the costs of said sale, including a reasonable attorney's fee; second to the payment of the amount of said assessment, whether due or not, with the unpaid interest thereon to the date of sale, and any amount that may be due the Association by virtue of the special liens herein declared; and, third, the balance, if any, to pay over to the said Lot owner. At any sale under the powers herein stated, the Association may bid for and purchase said property like a stranger thereto, and in the event the Association should become the purchaser at said sale, either the auctioneer conducting the sale or the Association may execute a deed to the Association in the name of the Lot owner.

Proceeding against the owner personally shall not be deemed a waiver of the right to foreclose the lien. No owner may escape liability for assessments provided for herein by the abandonment or transfer of such owner's Lot.

21. **LIABILITY:** Neither the Developer, the Committee or the Association, its employees, agents or assigns, shall be liable to any Lot owner(s) for (i) the manner in which it exercises or for its failure or refusal to exercise any right or authority herein granted to it, whether discretionary or not; (ii) for the failure or refusal of any Lot owner to comply with any of the provisions hereof; or, (iii) the failure or refusal of the Developer, the Committee or the Association to enforce any of the provisions hereof against any Lot owner, his Builder, agent or assigns.

22. **COMMON AREAS:** Any Common Areas shown on the recorded plats of Colonial Hills or Bakerfield Subdivisions and Common Areas contained in all future units of Colonial Hills, if any, shall be conveyed to the Association. The type and time of said conveyance shall be at the sole discretion of the Developer. In accordance with the requirements of the City of Mobile and/or Mobile County, Alabama, no amendment to this Declaration shall remove the responsibility of the Association and/or Members thereof to maintain and repair the Common Area (as shown on the recorded plat of the property), including the Detention Area facilities, if any. The Developer will maintain liability insurance on the Common Area, until such time that the Property is deeded to the

Home Owners Association. At that time, it will be the responsibility of the Home Owners Association to provide liability insurance and on said Common Area, as they decide insurance is necessary. Once the Developer turns over the said responsibility to the Association, the Developer will have no further responsibility for the Common Areas, and will be released from liability therefor. No amendment to these restrictions may be approved or have any legal effect which renames or transfers the responsibility of the Common Areas, from the Association.

23. **ENFORCEMENT:** It is hereby stipulated that all of the aforesaid restrictions shall constitute covenants running with the land, and that they are hereby created for the benefit of and shall be fully binding upon all persons and entities now or hereafter owning property in said Subdivision, and upon their heirs, successors, and assigns, including owners and their heirs, and assigns, until modified or canceled as provided herein. The Association, Architectural Control Committee or the owner of any Lot in said Subdivision shall have and are hereby granted the right to enforce compliance on the part of any other owner of any other Lot in said Subdivision, by whatever legal means may be available, with any or all of the restrictions herein contained, and may recover damages, including reasonable attorneys fees, to the extent suffered by such owner for the violation by such other owner of any or all of said restrictions.

24. **AMENDMENT OR MODIFICATION OF RESTRICTIONS:** Any and all of the restrictions or requirements hereinbefore set forth may be annulled, amended or modified at any time by the Owner, so long as it continues to own any lots within the Subdivision, without the consent of the property owners or by the owners of not less than Seventy-Five percent (75%) of the lots in said Subdivision, provided, that the owner, its successors and assigns must approve such amendments, modifications, or annulments so long as such owner shall own any lots in said subdivision and any adjacent lands under his control. Any amending instrument shall be acknowledged by the Owner or owners signing same and shall be filed for record in the Office of the Judge of Probate, Mobile County, Alabama, provided that no amendments shall place an additional burden, restriction or requirement on any lot in said Subdivision, the Owner of which does not join in the said amending instrument. Notwithstanding anything to the contrary herein contained, it shall be the responsibility of the Association to maintain and repair the Common Areas, including the storm water Detention Area and Facilities, and no amendment to this Declaration shall remove the responsibility of the Association and/or Members thereof to maintain and repair the Common Areas (as herein defined) in accordance with the requirements of this Declaration and, also, the requirements of the County/City of Mobile. Any such attempted amendment shall be void and to no effect.

25. **SEVERABILITY:** Invalidity of any of these covenants by Judgement or court decree shall in no way affect any of the other provisions which shall remain in full force and effect.

IN WITNESS WHEREOF, JMH Development Company, Inc., an Alabama Corporation, by its President, John M. Howard, is authorized to execute this conveyance has caused the hereinabove restrictions to be executed on this the \_\_\_\_\_ day of \_\_\_\_\_, 2012.

JMH Development Company, Inc.

By: \_\_\_\_\_  
John M. Howard  
President

STATE OF ALABAMA)

COUNTY OF MOBILE)

I, the undersigned Notary Public, in and for said State and County, hereby certify that John M. Howard, whose name as President of JMH Development Company, Inc., is signed to the foregoing restrictions and who is known to me, acknowledged before me on this date that, being informed of the contents of said instrument, he with full authority, executed the same voluntarily as his own act.

Given under my hand and official seal this the \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_

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Notary Public, State of Alabama at Large  
My Commission Expires: \_\_\_\_\_

**This Instrument Prepared By:**  
**W. Lindsay Walker**  
**6156 Omni Park Drive**  
**Mobile, Alabama 36695**