

McDONALD, DUPREE, RODRIGUEZ & MOORE

49 Green Street
MARIETTA, GEORGIA 30060

WARRANTY DEED

178

STATE OF GEORGIA COUNTY OF COBB

THIS INDENTURE, Made the Eleventh day of December, 1973, in the year one thousand nine hundred Seventy three, between

GARVIS L. SAMS

of the County of Cobb, and State of Georgia, as party or parties of the first part, hereinafter called Grantor, and

PLANTATION DEVELOPMENT COMPANY

as party or parties of the second part, hereinafter called Grantee (the words "Grantor" and "Grantee" to include their respective heirs, successors and assigns where the context requires or permits).

WITNESSETH that: Grantor, for and in consideration of the sum of Ten and no/100 and other good and valuable considerations (\$10.00) DOLLARS in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, convey and confirm unto the said Grantee,

All that tract or parcel of land lying and being in Land Lots 73 and 81 of the 1st District, 2nd Section, Cobb County, Georgia, and being more particularly described as follows:

BEGINNING at the Northwest intersection of the rights of way of Johnson Ferry Road and Papermill Road, running thence Westerly along the Northern right of way of Papermill Road 1,127.8 feet to an iron pin; thence running North 09 degrees 46 minutes 30 seconds West 576.2 feet to an iron pin; thence running North 11 degrees 47 minutes West 588.0 feet to an iron pin; thence running South 89 degrees 56 minutes 30 seconds East 497.6 feet to an iron pin; thence South 0 degrees 12 minutes East 313.6 feet to an iron pin; thence North 89 degrees 56 minutes 30 seconds East 780.5 feet to an iron pin on the West side of the right of way of Johnson Ferry Road; thence running Southerly along the West side of said road 593.5 feet to the point of beginning; and containing 21.81 acres.

Attached here and as Exhibit "A" and incorporated herein as if fully setforth is an Agreement between Grantee herein and others, the intention of the parties hereto that the covenants and conditions contained in said Agreement be covenants running with the land conveyed herein.

1.00 pd

County, Georgia
Local Habit. Trans. or Tax
Paid \$ 1.00
Date 12-18-73
TYRE LEE TERRY
Clerk of Superior Court

TO HAVE AND TO HOLD the said tract or parcel of land, with all and singular the rights, members and appurtenances thereof, to the same being, belonging, or in anywise appertaining, to the only proper use, benefit and behoof of the said Grantee forever in FEE SIMPLE.

AND THE SAID Grantor will warrant and forever defend the right and title to the above described property unto the said Grantee against the claims of all persons whomsoever.

IN WITNESS WHEREOF, the Grantor has signed and sealed this deed, the day and year above written.

Signed, sealed and delivered in presence of:

[Handwritten signatures] (Seal)

GEORGIA, Cobb County, Clerk Office Superior Court (Seal)

Filed for Record 12 day of Dec 1973

TYRE LEE TERRY, Clerk

for Affidavit see Os. 2258 p 99

1483

AGREEMENT

This Agreement made this ___ day of December, 1973, by and between Plantation Development Company (hereinafter called Plantation) as party of the first part; and Peter R. Furniss, Billy P. Whitley, Ronald J. Brouse and Herman Felton (Hereinafter called Appellants) as parties of the second part:

WITNESSETH:

Section One

The parties hereto are litigants in Cobb County, Georgia, Superior Court File No. 38679-A, styled Cobb County Board of Commissioners vs. James Allgood, Carlos Jones, Sun Oil Company, Plantation Development Company (Intervenor), Peter R. Furniss, Billy R. Whitley, Ronald J. Brouse, Herman Felton (Intervenor). This action was initiated by The Board of Commissioners of Cobb County, Georgia, filing for a Declaratory Judgment regarding the use of certain property of James Allgood, Carlos Jones and Sun Oil Company. On March 22, 1973, Plantation intervened in the action, seeking a declaration regarding its use of property located in Land Lots 73 and 81 of the 1st District and 2nd Section of Cobb County, Georgia, as described in Exhibit "A" attached hereto and incorporated herein (hereinafter called the "Property"). By judgment and order of the Court on March 27, 1973, the Cobb County Board of Commissioners was ordered and directed to cause building permits to issue for construction of a neighborhood shopping center on the property. The finding of fact and law upon which the Court's order was based was that prior to December 26, 1972, there had not existed a legally valid zoning ordinance in Cobb County, and that because prior to such date Plantation had expended substantial funds in planning and preparing the property for commercial use in the form of a neighborhood shopping center, a substantial interest had arisen legally requiring issuance of a building permit allowing the property to be improved and used as a neighborhood shopping center. Thereafter, on April 25, 1973, the Cobb County Board of Commissioners moved that the Court correct or

189

modify its March 27, 1973 order as it related to the property for the reason that it had not previously been shown that Plantation had objected to the zoning ordinance of December 26, 1973, which if allowed to control, would not permit immediate construction of a neighborhood shopping center on the property. Additionally, the motion contended that Appellants had not been afforded an opportunity to be heard in the prior proceedings. Thereafter, on May 8, 1973, Appellants intervened in the proceedings, raising essentially the same contentions for correction or modification as those in the Commissioners' Motion on April 25, 1973. Thereafter, on September 13, 1973, the Court entered an order contra to Appellants' position, thus affirming the Order of March 27, that a building permit should issue for construction of a neighborhood shopping center on the property. On October 21, 1973, Appellants filed a Notice of Appeal from the Court's Orders of March 27, 1973, and September 13, 1973.

On November 15, 1973, Plantation, after notice to Appellants, moved that the Court require Appellants post a supersedeas bond pending appeal, and the Court ordered that on or before December 10, 1973, at 9:30 A.M., Appellants file with the Clerk of the Superior Court of Cobb County a bond in the amount of \$50,000, conditioned for the satisfaction of the judgment in full, together with costs, interest and damages for delay, if for any reason the pending appeal is dismissed or found to be frivolous, and to satisfy in full such modification of the judgment and such cost, interest and damages as the Appellate Court may award Plantation. The Order further provides that failure to post such bond shall operate to vacate any supersedeas of Appellants' Notice of Appeal.

The orders of March 27, 1973, and September 13, 1973, have not been appealed from the Board of Commissioners of Cobb County, and the time within which such appeal could have been made has expired.

Section Two

The parties hereto are all owners of other property contiguous to or near "The Property". The general area in which the property is located is one of significant natural beauty, having located thereon tasteful and

expensive residential dwellings. The area also includes the recreational facilities of Atlanta Country Club and The Chattahoochee Plantation Club. The Property is a tract of 21.81 acres at the Northwest corner of Johnson's Ferry Road and Paper Mill Road. These roads are major traffic arteries for the area.

Section Three

This Agreement is entered into for multiple purposes; one of which is to terminate the litigation set forth in Section One hereof. Another purpose of paramount import is to insure that development of The Property be allowed to proceed, but only under certain specific conditions. This Agreement is intended to set forth these conditions and establish the conceptual tenor of the development. As a preliminary to the specific conditions of development, Plantation states that its intentions are to construct improvements on The Property that are unique and different from those usually found in what is customarily known as the Metropolitan Atlanta Area. In arriving at the result of these intentions, Plantation has visited and inspected shopping and the commercial facilities in numerous other areas of the United States, and also in other countries of the world. As a result of Plantation's activities, they have concluded that a "Village" concept is consistent with the area in which the property is located. This concept, as contemplated by Plantation requires that:

A. The existing topography of The Property be generally retained except as may be necessary to create earth berms along Johnson Ferry Road and Paper Mill Road;

B. Buildings constructed on The Property be located in a manner as to avoid the usual shopping center concept of "rows of stores" with adjoining walls fronting on unbroken, massive areas of asphalt parking areas";

C. The entire Property area be visually screened, by topography and landscaping, from the view of passers-by and adjoining property owners;

D. The exterior design and materials be unlike the usual commercial structure because of design style and material type, and be generally of a residential character.

Pursuant to the aforesaid "Village" concept, Plantation has previously commissioned the preparation of architectural and engineering documents titled "The Papermill Village Center" (prepared by Heery and Heery), copies of which have been filed with the Building Permit administrative office of Cobb County, Georgia, and copies of which have been provided to the law firm of Sams, Dozier and Glover, Marietta, Georgia, Attorneys for Appellants. Revisions of Sheet Four of the Documents have been made as of November 28, 1973, a copy of such revisions having been provided to Appellants' attorneys. These documents are incorporated into this Agreement as if fully set forth.

Therefore, because of the aforesaid reasons, so that Appellants can effectively control the enumerated development aspects to follow, and for the mutual benefit of the parties hereto, the parties agree as follows:

Section Four

Plantation covenants and binds itself to construct improvements on The Property as follows:

A. PERIMETERS: The existing earth berm along Panermill Road shall remain (or shall be constructed if not present), except at those points shown on Sheet Four (Landscape Plan) for entrance and egress to the property, and excepting that part at the intersection with Johnson's Ferry Road that necessarily must be low enough in elevation for vehicle safety on approaching the interesection;

An earth berm shall be constructed along Johnson's Ferry Road except as those points on Sheet Four for entrance and egress and excepting that part at the intersection with Panermill Road that necessarily must be low enough in elevation for vehicle safety on approaching the intersection;

All earth berms along Johnson Ferry Road and Paper Mill Road should be of sufficient size to provide visual screening from passers-by:

The perimeter boundaries on that part of the property not fronting on Johnson's Ferry Road or Paper Mill Road shall have a security shield utilizing retaining walls, vegetation, or fences; the primary purpose of which shall be to prevent children and animals from straying from adjoining property into traffic areas, and providing a visual screen to adjoining property. In the event fencing is used in any area, it shall be galvanized chain link at least 48 inches high and will be camouflaged on both sides by vines and/or other ornamental vegetation.

All perimeters will have landscaped buffer areas of at least the widths shown on Sheet Four (Landscape) and the buffer areas on that part of The Property not fronting on Paper Mill or Johnson's Ferry Road shall be at least thirty (30) feet wide.

B. BUILDINGS: All buildings-constructed on the property shall be residential in character. The buildings shall be used for general purpose commercial, shopping and professional offices. Exterior building materials shall be limited to stone, brick, textured concrete, stucco, wood and cedar shakes. Plastics and industrial metals shall not be used. Design and materials shall be consistent with that exemplified by the Heery and Heery Documents on sheets A1-7, S1-2, E1-3, M-1, P-1 (these sheets relating to the first of the buildings to be constructed, a bank facility, the design and materials for which have been approved by Cobb County); on sheets A1-11, S1-4, E1-3, M1-4, P1-5 (these sheets relating to the second building to be constructed, a restaurant facility, the design and materials for which have been approved by Cobb County). Reference is also made to certain photographic slides of developments in Heritage Village, Connecticut, copies of which have been delivered to Appellants' attorneys. By this reference, it is not intended that the buildings depicted shall be constructed, but that the concept of materials and residential character be adopted and expressly made a condition of this agreement.

All exterior mechanical equipment or service yards required for the buildings shall be screened from view, including but not limited to such equipment that may be installed on the roof of any building.

PPF

The maximum total gross square feet of the buildings to be constructed on The Property shall not exceed 210,000 square feet ~~(excluding the area designated as future conference center as shown on Sheet Four)~~. It is contemplated that the structures to be constructed on The Property shall not exceed two (2) stories (excluding basements); however, three (3) stories shall be permissive so long as in keeping with the total "Village" concept.

C. PARKING: Parking areas will be separated by landscaped buffers, in the manner indicated on Sheet Four. Each parking area shall be screened from others by trees and ornamental vegetation. The intent of such design is to guard against "a sea of asphalt and cars", and to allow traffic to specific areas of the center without travelling through the entire area.

D. EXTERIOR SIGNS AND LIGHTING: Signs will be allowed on the buildings only if painted directly on the buildings, or painted on wood material that is mounted in such manner that the signs do not protrude above the roof-line of buildings having the lowest elevation in the center. No neon, back lighted or plastic signs shall be allowed. All other lighting shall be low-level.

E. GENERAL: (i) The lake shown on Sheet Four is essentially in the location of the existing lake on the property, and shall be reworked and landscaped as shown, consistent with the entire center.

(ii) Plantation intends that revised Sheet Four specifically bind the property as to perimeter buffers, and further, that the buffers along the entire North boundary be at least thirty (30) feet wide.

F. Plantation agrees, covenants and accents as an express condition of this Agreement that this Agreement shall be recorded in the real property records in the Office of the Clerk of the Superior Court of Cobb County, Georgia, with the intent that the express conditions of this Agreement bind The Property as covenants to its development; particular emphasis is placed upon the tenor of the overall concept of the development.

Section Five

Appellants agree that simultaneously with execution of this Agreement, their attorneys shall immediately proceed to dismiss their pending appeal in the aforesaid Cobb Superior Court, Civil File No. 38679-A.

In order to insure enforcement of these covenants against Plantation's assigns and successors in title, it is agreed that Plantation shall execute and deliver a general warranty deed to Garvis L. Sams, for Ten Dollars (\$10.00) and other good and valuable considerations (such consideration including but not limited to dismissal of the appeal as aforesaid) conveying The Property and that said Garvis L. Sams shall, for Ten Dollars (\$10.00) and other good and valuable considerations (including but not limited to attorney's fees paid to said Garvis L. Sams) execute and deliver a general warranty deed to Plantation conveying The Property subject to the restrictive covenants contained in the within Agreement. Garvis L. Sams, for the purpose of enforcing these covenants running with the land, shall be authorized in law or equity to require compliance on the part of any violator of the covenants hereinbefore set out or to seek redress for breach thereof. In the event of a breach of the covenants herein by Plantation, its successors or assigns, Plantation covenants and binds itself, its successors and assigns to pay reasonable attorney's fees and costs arising from enforcement or redress of such breach.

This Agreement shall be binding on the parties' heirs, executors, administrators, successors or assigns.

WHEREFORE, the parties have set their hands and seals the day and year first above written.

PLANTATION DEVELOPMENT COMPANY

By: [Signature]

[Signature]
Witness

[Signature]
Notary Public

Notary Public, Georgia, State at Large
My Commission Expires 10/23/73

12 Dec 1973
13 Dec 13 1973

APPELLANTS:

186

Peter P. Furniss
Peter P. Furniss

[Signature]
Notary Public
Notary Public, Georgia, State at Large
My Comm. Expires June 28, 1977

Billy R. Whitley

Witness

Notary Public

Ronald J. Brouse
Ronald J. Brouse

[Signature]
Witness

[Signature]
Notary Public
Notary Public, Georgia, State at Large
My Comm. Expires Dec. 8, 1974

[Signature]
Norman Felton

[Signature]
Witness

[Signature]
Notary Public
Notary Public, Georgia, State at Large
My Comm. Expires Dec. 9, 1974

3 p
Dec 12 1973
Dec 13 1973

EXHIBIT "A"

All that tract or parcel of land lying and being in Land Lots 73 and 81, of the 1st District, 2nd Section, Cobb County, Georgia, and being more particularly described as follows:

BEGINNING at the Northwest intersection of the rights of way of Johnson Ferry Road and Papermill Road, running thence Westerly along the Northern right of way of Papermill Road 1,127.8 feet to an iron pin; thence running North 09 degrees 46 minutes 30 seconds West 576.2 feet to an iron pin; thence running North 11 degrees 47 minutes West 588.0 feet to an iron pin; thence running South 89 degrees 56 minutes 30 seconds East 497.6 feet to an iron pin; thence South 0 degrees 12 minutes East 313.6 feet to an iron pin; thence North 89 degrees 56 minutes 30 seconds East 760.5 feet to an iron pin on the West side of the right of way of Johnson Ferry Road; thence running Southerly along the West side of said road 593.5 feet to the point of beginning; and containing 21.81 acres.