

STATE OF ALABAMA)

SHELBY COUNTY)

Inst # 2001-27838

07/05/2001-27838
02:50 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
023 MB 89.00

**DECLARATION
OF PROTECTIVE COVENANTS,
RESTICTIONS, EASEMENTS, RIGHTS AND LIENS
HAYESBURY TOWNHOMES**

KNOWN ALL MEN BY THESES PRESENTS, That:

WHEREAS, FORESIGHT DEVELOPMENT, L.L.C., an Alabama limited liability company ("Development") owns certain land in Shelby County, Alabama (hereinafter sometimes referred to as the "Subject Property"), more particularly described as Hayesbury Townhomes, as recorded in Map Book 28, page 89, in the Probate Office of Shelby County, Alabama; and

WHEREAS, Developer desires to establish certain protective covenants with respect to the Subject Property as set forth herein, which protective covenants will run with the Subject Property and be binding on all parties having any right, title or interest in the Subject Property or any part thereof, their heirs, successors and assigns and shall insure to the benefit of each owner thereof;

WHEREAS, Developer may acquire additional land in Shelby County adjacent, or in close proximity, to the Subject Property, and may, at Developer's discretion without any requirement to do so, subject additional land or portions thereof to this Declaration of Protective Covenants Restrictions, Easements, Rights, and Liens at which time the additional land will become a part of the Subject Property.

NOW, THEREFORE, Developer does hereby declare that the Subject Property shall hereafter be subject to the following restrictions, conditions, exceptions, liens, and protective covenants, to-wit:

ARTICLE I

DEFINITIONS

- 1.1 Articles.** The Articles of Incorporation of the Association.
- 1.2 Association.** Hayesbury Townhomes Association, Inc., its successors and assigns (the Articles of Incorporation and Bylaws for which are recorded in the Office of the Judge of Probate of Shelby County, Alabama, concurrently herewith).
- 1.3 Association Land.** That part of the Subject Property, which may at any time hereafter, be owned by the Association for so long as the Association or successor thereof may be the owner thereof.
- 1.4 Board.** The Board of Directors of the Association.
- 1.5 Bylaws.** The Bylaws of the Association.
- 1.6 Builder.** A builder licensed under the laws of the State of Alabama to construct residential dwellings.
- 1.7 Common Areas.** Those portions of the Subject Property which are conveyed to the Association by deed or other conveyance or which are defined or designated as Common Areas pursuant to this Declaration or by notation on record map or plat of the Subject Property.
- 1.8 Declaration.** This Declaration of Protective Covenants, Restrictions, Easements, Rights and Liens for Hayesbury Townhomes which shall be recorded in the Probate Records of Shelby County, Alabama, as the same may be from time to time be supplemented or amended in the manner described herein.
- 1.9 Developer.** Foresight Development, L.L.C., an Alabama limited liability company, and any successor thereof and any purchaser from Foresight Development, L.L.C. of any portion of the Subject Property to whom Foresight Development, L.L.C. also conveys and assigns its rights hereunder as Developer.
- 1.10 Development Plan.** The development plan for a Parcel (including any future modification thereto), includes plat plans, grading plans, building plans, and specifications showing site and plot layout and all exterior elevations, exterior materials and colors thereof, foundation plans, schedule of proposed materials, landscaping, irrigation and drainage plans, design and location of all Improvements including, without limitation, the dwelling, mailboxes, and entrance columns and other construction related plans by the Architectural review Committee.
- 1.11 Improvement.** Any dwelling, building, wall enclosure, fence mailbox, parking facility, storage facility, utility facility, or any other structure of any type, road, curb cut, landscaping (including removal of vegetation), excavation (including removal of trees), irrespective of whether the

Improvement is temporary or permanent.

- 1.12 Member.** A parcel owner.
- 1.13 Hayesbury Townhomes or Hayesbury Property.** The name of the Subject Property.
- 1.14 Parcel.** Any unit, lot, part, or parcel of the Subject Property designed for a residence and platted of record, regardless of whether a dwelling has or has not been constructed thereon.
- 1.15 Parcel Owner.** The owner or owners of record title to any parcel.
- 1.16 Resident.** Any person or persons occupying a Parcel.
- 1.17 Subject Property.** The property subjected to this Declaration, including both the property more particularly described as Hayesbury Townhomes, as recorded in the Map Book and page number, in the Probate Office of Shelby County, Alabama, as set forth on page 1 of the Declaration, and any other Real property which may be subjected to the Declaration by separate Instrument executed by Developer.
- 1.18 Termination of Developer Voting Rights.** The date which is the earlier of the expiration of one (1) year during which Developer does not own any portion of the Subject Property or the time when Developer notifies the Association in writing that Developer relinquishes and terminates Developer's control over the Association.
- 1.19 Maintenance.** Shall mean the exercise of reasonable care to keep lots and the common area, including, buildings, easements of ingress, drainage easements, sign easements, utility easements, landscaping, lighting and other related improvements and fixtures in a condition comparable to their original condition. All drainage structures shall be constructed and maintained according to the various regulations of Shelby County.

ARTICLE II

ARCHITECTURAL REVIEW COMMITTEE; ARCHITECTURAL CONTROL

2.1 Architectural Review Committee. The Architectural Review Committee (the "Architectural Review Committee") shall be composed of at least two and no more than five individuals designated and redesignated from time to time by the Developer until Termination of Developer Voting Rights. The initial members of the Architectural Review Committee shall be Paul J. Spina, Jr. and Bobby L Bynum 3477 Indian Lake Trail Pelham, Alabama 35124. The members of the Architectural Review Committee will be designated and may be removed at any time by the Developer, until such time as there is a Termination of Developer

Voting Rights. Upon Termination of Developer Voting Rights, the Board of Directors of the Association shall have the right to appoint and terminate, with or without cause, all members of the Architectural Review Committee. At that time, the Association shall become vested with the rights, duties and functions of the Architectural Review Committee, all of which shall be enforceable by the Association.

2.2 Approval Required; Development Plan. Before commencing the construction or alteration of any Improvement on any Parcel, two (2) copies of the Development Plan must first be submitted in writing to and approved in writing by the Architectural Review Committee. The Architectural Review Committee shall have the right to establish and amend from time to time written rules, regulations and standards governing construction and alteration of any dwellings or other improvements on any Parcel, as well as the content and types of information required to be submitted to the Architectural Review Committee for its approval, each of which shall be in addition to the provisions and requirements set forth herein.

2.3 Alterations. Any exterior remodeling, reconstruction, alterations or additions to an existing dwelling or any activity which would change or alter the exterior appearance of a dwelling or other structure or other improvement must be approved in writing by the Architectural Review Committee. Interior remodeling, reconstruction or alterations of a dwelling not affecting the exterior appearance of the dwelling shall not require the written approval of the Architectural Review Committee, but shall comply with all restrictions and covenants set forth herein.

2.4 Application Process.

(a) No Improvements shall be erected, placed maintained or permitted on any Parcel until two (2) copies of the Development Plan shall have been submitted in writing to and approved in writing by the Architectural Review Committee. The Development Plan shall be submitted in writing over the signature of any Parcel Owner or its authorized agent, and shall be accompanied by the request of any Parcel Owner or its agent, specifying for which part of the Development plan approval is sought.

(b) In any case in which the Architectural Review Committee shall disapprove a Development Plan or shall approve the Development Plan only upon specified modifications or conditions, the disapproval or qualified approval shall be accompanied by a statement of the grounds upon which such action is based. Upon approval by the Architectural review Committee of any Development Plan submitted hereunder, a

copy of the Development Plan, as approved, shall be deposited for permanent record with the architectural Review Committee.

- (c) If the Architectural Review Committee fails either to approve or to disapprove the Development Plan within thirty (30) business days after the Development Plan has been submitted in writing to the Architectural Review Committee, it shall be conclusively presumed that the Architectural Review Committee has approved the Development Plan, subject, however, to the covenants contained herein, and provided that the applicant provides conclusive proof that the Architectural Review Committee actually received the Development Plan. This proof may be provided only by an acknowledgment of receipt of the Development Plan signed by the Architectural Review Committee or by a return receipt for certified mail signed by the Architectural Review Committee, which certified mail forwarded the Development Plan to the Architectural Review Committee.
- (d) The Architectural Review Committee shall, in its sole discretion, determine whether the Development Plan and other data submitted by any Parcel Owner for approval are acceptable. Any approval granted by the Architectural Review Committee shall be effective only if the approval is in writing. The Architectural Review Committee shall have the right to disapprove any Development Plan upon any ground which is consistent with the objectives and purposes of this Declaration, including, without limitation, purely aesthetic considerations, failure to comply with any of the provisions of this Declaration, failure to provide requested information, objection to exterior design, appearances or material, objection on the ground of incompatibility with the overall scheme of development for the Parcel or for the Subject Property, objection of any proposed Improvement on any Parcel, objection to the color scheme, finish, proportions, style of architecture, height, bulk or appropriateness of any dwellings or other Improvement on any Parcel or any other matter which in the sole and absolute judgement of the Architectural Review Committee would render the proposed dwelling or other Improvement inharmonious with the general plan of the development for the Subject Property. The approval of the Development Plan for any one specific dwelling or other Improvement shall not be deemed an approval or otherwise obligate the Architectural Review Committee to approve a similar Development Plan for any other Improvement to be constructed or located on any Parcel within the Subject Property.

2.5 Inspection Rights. The Developer, the Association or the Architectural Review Committee, or any agent or employee thereof, may at any reasonable time or times enter upon and inspect any Parcel and any Improvement thereon for the purpose of ascertaining whether the maintenance of such Parcel and the maintenance, construction, or alteration of any Improvement thereon are in compliance with the provisions hereof and neither Developer, nor the Association, nor the Architectural Review Committee, nor an agent, officer or employee thereof shall be deemed to have committed a trespass or other wrongful act by reason of the entry or inspection. Any inspection shall be for the sole purpose of determining compliance with this Declaration, and neither the making of any inspection, nor the failure to make any inspection, shall be relied upon by Parcel Owners or any third persons or entities for any purpose whatsoever; nor shall any inspection obligate Developer, the Association or the Architectural Review Committee to take any particular action based on the inspection.

2.6 Condition of Property. The Subject Property may be located in an area which includes underground mines, tunnels, sinkholes and subsurface conditions. The approval of Development Plan by the Architectural Review Committee shall not be construed in any respect as a representation or warranty by the Architectural Review Committee, the Association or Developer or of any director, officer, employee or agent of any of them, to any Parcel Owner or any other person that the surface or subsurface conditions of any Parcel are suitable for the construction of a dwelling or other Improvement thereon. It shall be the sole responsibility of each Parcel Owner to determine the suitability and adequacy of the surface and the subsurface conditions of the Parcel. None of the entities or persons referred to in this Section shall be liable or responsible for any damage or injury suffered or incurred by any Parcel Owner or any other person as a result of surface or subsurface conditions affecting a Parcel or any portion thereof, including, without limitation, any surface or subsurface drainage or underground mines, tunnels, sinkholes or other conditions or types of ground subsidence occurring on or under any Parcel.

2.7 Waiver of Liability. THE SCOPE OF REVIEW BY THE ARCHITECTURAL REVIEW COMMITTEE IS LIMITED TO APPEARANCE ONLY AND DOES NOT INCLUDE ANY RESPONSIBILITY OR AUTHORITY TO REVIEW FOR STRUCTURAL SOUNDNESS, COMPLIANCE WITH BUILDING OR ZONING CODES OR STANDARDS, OR ANY OTHER SIMILAR OR DISSIMILAR FACTORS. None of the Architectural Review committee, or the Association, or Developer, or any architect, agent, officer or employee of any of the foregoing, shall be responsible in any way for any failure of any Improvement to comply with requirements of this Declaration, even if a certificate of compliance has been issued, nor for any defects in any Development Plan submitted, revised or approved, nor for any structural or other defects in any work done according to any Development Plan, and all persons relying thereon agree not to sue or claim against the entities and persons referred to in this Section for any cause arising out of the matters referred to in this Section and further agree to and do hereby release each of these entities and persons from any and every such cause. Each Parcel Owner, by acceptance of a deed to any Parcel, hereby releases the Architectural Review Committee, the Association, the Developer and their respective agents, officers, directors, members and successors and assigns, from all liability of every nature whatsoever arising from damage, loss or expense suffered, claimed, paid or incurred- by any Parcel Owner or from any injury to property or injury or death to any person, related in any way to any defects in any Development Plan submitted to or approved by the Architectural Review Committee, any defects resulting in any work done under the Development Plan. or other data submitted, or any action taken or not taken by the Architectural Review Committee, Developer or the Association related thereto.

2.8 Variances. The Architectural Review Committee shall have the right, in its sole and absolute discretion, to grant any variances from any of the restrictions contained in this Declaration upon written application to the Architectural Review Committee requesting a variance; provided, however, that the grant of a variance to one party shall not vest in any other party a right to receive the same or a similar variance. All variances shall be in writing and signed by the Chairman or Vice-Chairman of the Architectural Review Committee.

2.9 Charges for Review of Plans, Certificates. The Architectural Review Committee shall have the right to establish from time to time reasonable charges and fees for the review of any Development Plan, and for issuing any certificate or statement required by, or requested pursuant to, this Declaration. The Architectural Review Committee shall, upon request and at reasonable charges, furnish to any Parcel Owner a written certificate setting forth whether all necessary approvals have been obtained from the Architectural Review Committee in connection with any dwelling or other Improvements on a Parcel.

2.10 Developer's Exemption. Developer and any Parcel or other portion of the Subject Property owned by Developer shall be exempt from the covenants and other requirements of Article II.

ARTICLE III

GERNERAL RESTRICTIONS

3.1 Land Use and Building Type. No parcel shall be used except for a single-family residential purposes. No building shall be erected, placed, or permitted to remain on any Parcel other than one single-family dwelling not to exceed two and one-half stories or forty (40) feet in height, and any additional detached structures as shall be approved by the Architectural Review Committee. No mobile homes or modular house may be placed on a Parcel.

3.2 Construction Standards. Except as otherwise specifically approved or required by the Architectural Review Committee with respect to any particular Parcel, each Parcel and Improvements thereon shall be constructed and maintained in accordance with the following requirements and standards:

- (a) The exterior finish of each dwelling shall be brick, with the exception of any applicable building code requirements. Brick color and texture to be uniform throughout the property and approved by the Architectural Review Committee.
- (b) Wood frame, vinyl or painted aluminum windows will be used exclusively on the sides, fronts and rears of all dwellings. No unpainted or unprimed aluminum will be allowed.
- (c) Each dwelling constructed on a Parcel shall contain a minimum of 1,000 square feet of heated and cooled living area, excluding porches, garages, basements, and decks or comply with the City of Pelham zoning requirements on square footage.
- (d) The Improvements on each parcel within the Subject Property must include "adequate off-street parking to accommodate at least two (2) vehicles.
- (e) No concrete block work, including foundations, concrete block steps, walkways, walls or any other concrete block work, whether painted or otherwise, shall show above ground or from the exterior of any dwelling in excess of eight (8) inches.
- (f) No garage may be enclosed and finished as living area.
- (g) No window unit air-conditioning shall be placed on any Parcel. Outside air-conditioning units may not be located in the front of any parcel or within any side yard adjacent to any street on corner lots.
- (h) The roof pitch on any dwelling shall not be less than six to twelve unless otherwise approved in writing by the architectural review Committee. -All roof vents and pipes shall be painted as near the

color of the roof as practicable, and shall be located on the rear of the dwelling and not visible from the front. No solar or other energy collection devise or equipment shall be maintained on any Parcel or dwelling if the same would be visible from the street. No projections of any type shall be allowed above the roof of any dwelling except for chimneys and vent stacks approved by the Architectural Review Committee. Finished roofing shall be a dimensional shingle approved by the Architectural Review Committee.

- (i) No open carports shall be allowed on any Parcel.
- (j) Utility service shall be underground. No utility poles or above ground wires shall be permitted except during the construction phase, and for the primary entrance to Property.
- (k) No individual water supply system shall be permitted on any Parcel unless the system, in all respects, complies with the requirements and recommendations of all state and local law and regulations. Approval of any system as installed shall be obtained from all government agencies.
- (l) No individual sewage disposal system shall be permitted on any Parcel unless the system, in all respects complies with the requirements and recommendations of all state and local laws and regulations. Approval of any system as installed must obtain all government agencies.
- (m) No shrubs or trees shall be planted on street corners or beside driveways that will impede the view or sight of pedestrians or operators of automobiles.
- (n) Upon the completion of a dwelling, all front and side yards must be landscaped with sod and other landscaping approved by the Architectural Review Committee. The rear yard must be hayed, seeded or sodded.
- (o) No outside radio, television, ham broadcasting, or electronic antenna, aerial or tower, or any satellite dish or similar structure, shall be erected or maintained on any Parcel, except as approved in writing by the Architectural Review Committee, and none shall be visible from the front of any dwelling.
- (p) All driveways must be concrete finish.

- (q) To insure the proper drainage of storm water, runoff, no Parcel Owner shall prohibit, obstruct or otherwise alter any intended drainage course.

3.3 Fences. All fences are subject to the approval of the Architectural review Committee. All fences must be wood with the finished side on the outside and must be six (6) feet in height. All fences visible from Helena Road shall be planted with shrubbery approved by the Architectural Review Committee. No fence, wall, hedge or shrub planting which obstructs sight lines from any roadways within the Subject Property shall be placed or permitted to remain on any Parcel.

3.4 Mailboxes and House Numbers. At the time of construction of a dwelling on each Parcel, there must be erected a mailbox bearing the house number. The design and materials of the mailbox which must match the house on the Parcel) must be approved by the Architectural Review Committee. All mailboxes and house numbers must be erected by the Parcel Owners in strict conformity with design criteria and Development Plan approved by the Architectural Review Committee, which shall be common for each Parcel within a specific sector of the Subject Property.

3.5 Temporary and Auxiliary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other outbuilding shall be used on any Parcel at any time as a residence, either temporarily or permanently. No auxiliary structures may be placed on- a Parcel unless same have been approved by the Architectural Review Committee.

3.6 Storage of Boats, Trailers and Other Vehicles. No automobiles or other vehicles will be stored on any Parcel or Common Area or kept on blocks unless in the basement or garage of a dwelling. Boats, utility trailers, recreational vehicles and travel trailers must either be parked or stored in the basement or garage of a dwelling or within a completely enclosed structure on a Parcel, which structure must be approved by the Architectural Review Committee. No tractor trailer trucks, panel vans or other commercial trucks in excess of one (1) ton classification shall be parked or stored on any Parcel or Common Area, except during initial construction of a dwelling on a Parcel. The prohibitions in this Section shall not apply to temporary parking

The prohibitions in this Section shall not apply to temporary parking of trucks and other commercial vehicles providing commercial services to the Parcel or to the efforts and activities of Developer in connection with developing the Subject Property.

- 3.7 Certain Yard Restrictions.** The following shall be located or maintained only at the rear of, or behind, a dwelling: wood piles, articles such as children's toys, jungle gyms, trampolines and other outdoor recreational equipment and appurtenances, statues, water fountains, bird baths, flagpoles, bird feeders, wood carvings, plaques, other home crafts or furniture. Barbecue grills and other outdoor cooking equipment and apparatus shall be located only at the rear of a dwelling and should not be visible from any public street. Free-standing playhouses and tree houses must be approved by the Architectural Review Committee. No aboveground swimming pools shall be located on any Parcel. Outside clothes lines and other facilities for drying or airing of clothes are prohibited. No clothing, rugs or other items shall be hung, placed or allowed to remain on any railing, fence or will. No rocks, rock walls, fencing or other substance shall be placed on any Parcel as a front or side yard border or to prevent vehicles from parking on or pedestrians from walking on any portion of a Parcel or to otherwise impede or limit access thereto. Seasonal or holiday decorations (Christmas trees and lights, pumpkins, Thanksgiving decorations) shall be removed promptly from any Parcel or dwelling within thirty (30) days following the holiday.
- 3.8 Completion of Construction.** Construction of any dwelling or other Improvement must be completed within twelve (12) months from the date construction commenced, and must be prosecuted diligently and continuously. There shall be no occupancy of a dwelling until the dwelling is completed and finally inspected by the appropriate government authority.
- 3.9 Oil and Mining Operations.** No oil drilling, oil development operations, oil refining, quarrying, mining operations of any kind, oil wells, tanks, tunnels, mineral excavation, or shafts shall be permitted upon or in any Parcel. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained, or permitted upon any Parcel.

3.10 Livestock and Poultry. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Parcel, except that dogs, cats, or other household pets, not to exceed two (2) in number, may be kept provided they are not kept, bred, or maintained for any commercial purpose and that the animals do not violate any applicable law, ordinance or regulation.

3.11 Garbage and Refuse Disposal. No Parcel 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.

3.12 Crops, Gardens. No Parcel shall be cultivated for crops of any sort, except gardens of reasonable size, which are to be located at the rear of a dwelling and not visible from any public street.

3.13 Common Area Traffic. Motorized vehicular traffic of any type is prohibited on any Common Area except as may be required or permitted by the Developer or the Association for maintenance or construction.

3.14 Proscribed Uses. No operation or uses shall be permitted or maintained on any Parcel which cause or produce any of the following effects discernible within any portion of the Subject Property except during the period of construction of Improvements thereon:

- (a) Noise or sound that is unusual and inappropriate for the Subject Property and is objectionable because of its volume, duration, intermittent beat, frequency or shrillness;
- b) Noxious, toxic, or corrosive fumes or gases;
- (c) Obnoxious odors;
- (d) Dust, dirt or fly ash; or
- (e) Unusual fire or explosive hazards.

3.15 Covenant with Respect to Maintenance of Parcel and Improvements; Liens. Each Parcel Owner shall keep all Parcels owned by the Parcel Owner, and all Improvements therein, thereon or appurtenant thereto, in good order and repair, including the seeding, watering and mowing of all lawns, the pruning and cutting of all trees and shrubbery and the painting (or other appropriate external care) of all buildings and other Improvements, all in a manner and with such frequency as is consistent with good property management. There shall be no outside burning of wood, leaves, or trash except during construction of a dwelling or with approval of the fire department. If in the opinion of the Association any Parcel Owner fails to perform the duties imposed by the preceding sentence after thirty (30) days' written notice from the Association to the Parcel Owner to remedy the condition in question, the Association shall have the right, through its agents and employees, to enter upon the Parcel in question (or upon the improvements which may be appurtenant thereto) and to repair, maintain, repaint and restore the Parcel or Improvement and the cost thereof shall be a binding, personal obligation of the Parcel Owner as well as a lien (enforceable in the same manner as a mortgage) upon the Parcel in question. Any landscaping approved by the Architectural Review Committee cannot be changed pursuant to this Section.

3.16 Priority of Lien. The lien provided in Section 3.15 hereof shall not be valid as against a bona fide purchaser (or bona fide mortgagee) of the Parcel in question unless a notice of the lien shall have been recorded in the office of the Judge of Probate of Shelby County, Alabama, prior to the recordation in the office of the deed (or mortgage) conveying the Parcel in question to a purchaser (or subjecting the same to such mortgage).

3.17 Insect and Fire Control. In order to implement effective insect and fire control, the Association and/or Developer and their agents shall have the right to enter upon any Parcel on which a dwelling has not been constructed and upon which no landscaping plan has been approved as set forth herein, such entry may be made by personnel with tractors or other suitable devices, for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds or other unsightly growth, which in the opinion of the Association or

Developer detracts from the overall beauty, setting and safety of the Subject Property. Entrance for these purposes shall not be deemed a trespass. The Association and/of Developer and their agents likewise may enter upon any Parcel to remove any trash which has collected on the Parcel and the entrance and removal shall not be a trespass. The provisions in this Section shall not be construed as an obligation on the part of the Association or Developer to mow, clear, cut or prune any Parcel nor to provide garbage or trash removal service.

- 3.18 Signs.** No sign shall be nailed or attached to trees. No commercial signs, including "for rent," "for sale," and other similar signs, shall be erected or maintained on any Parcel unless authorized in writing by the Association, except that one sign advertising the Parcel for sale or lease, not in excess of five square feet, and not greater than five feet above ground level, shall, be permitted without the consent of the Architectural Review Committee. If permission is granted, the Architectural Review Committee may restrict the size, color and content of all signs.

ARTICLE IV

PROPERTY RIGHTS

1. Title to Common Areas. Declarant shall retain the legal title to the Common Area so long as it owns at least one lot subject to these covenants. On or before conveyance by Declarant of the last lot which Declarant owns in River Walk, Declarant shall convey the Common Areas to the Association subject to the taxes for the year of conveyance and to restrictions, conditions, limitations reservations and easements of record. Declarant expressly reserves the right to create additional non-exclusive common utility easements, easements of drainage, water retention easements, sanitary sewer easements, and ingress and egress easements in the common area as described above until such time as it conveys the common area to the Association, regardless of whether Declarant has conveyed any of the lots within to individual owners.
2. OWNER'S EASEMENT OF ENJOYMENT. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:
 - A. All provisions of this Declaration, any Plat of all or any part of the

property, and the articles and By-Laws of the Association;

- B. Rules and Regulations adopted by the Association governing the use and enjoyment of the Common Areas;
- C. Restrictions contained on any and all Plats of all or any of the Common Area or filed separately with the respect to all or any part or parts of the property;
- D. The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members; No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by 2/3 of members has been recorded and excepted by the public agency, or utility.
- E. Easements for installation and maintenance of utilities, drainage facilities and sign easements as shown on the recorded plat of the property as shown in Map Book ____ Page ____ in the Office of the Judge of Probate of Shelby County, Alabama, and any amendments thereto concerning the various types of easements which have been reserved by the Declarant.
- F. Drainage Easement. The Association shall have a Drainage Easement over and across the Drainage Easement Area for the installation, maintenance, repair and replacement of drainage ditches, pipes, lines and systems to collect and discharge surface water and run-off.
- G. Maintenance Easement. The association, each Owner, and their respective agents, contractors and employees, shall have a Maintenance Easement for the purpose of access to the rear or the attached townhomes which are proposed to be constructed on the Lots in connection with (1) any construction, installation, maintenance, removal, repair or replacement by an Owner of structures, improvements, equipment or other property situated on his Lot (provided that such easement right shall not authorize the construction or installation of any structure, improvement or other item, except in accordance with the terms and provisions of the Declaration); and (2) access by the Association to effect such construction, installation, removal, repairs, replacement, or to effect such other actions as the Association may deem to be necessary or appropriate in exercising its rights under the Declaration, or under applicable law, or in enforcing

the terms and provision of the Declaration. In order to facilitate the use of the Maintenance Easement, all fencing, barriers and other obstructions within the Maintenance Easement Area shall be constructed, designed and installed with gates or removable sections. The use and enjoyment of the Maintenance easement shall be subject to the following conditions and restrictions: (1) before undertaking any action pursuant to the Maintenance Easement which might materially affect any other party, the Owner of a Lot shall give not less than three (3) days prior notice to the Association; (2) the exercise and enjoyment of the Maintenance Easement shall be effected in a manner which will minimize any effect thereof on the Common Area and on any other Owners; (3) the Owner exercising the Maintenance Easement, after completion of his construction, installation, removal, repair, or replacement, shall restore the Maintenance Easement Area, and any property of any other Owners or of the Association, to their condition prior to such use, to the extent reasonably practicable; and (4) each Owner shall be responsible for any and all damage to property, death, or injury to persons, or other claim, damage or expense of any nature, caused by the act or omission of such Owner, or of his agents, contractors and employees, in exercising the Maintenance Easement. In addition to the foregoing, the Association shall have the right, from time to time, to establish or appropriate in connection with the use and enjoyment of the Maintenance Easement.

H. Conveyances by Association. The Association shall have the right to convey easement rights, rights-of-way, licenses and other interest and rights in and to the Easement Areas, to governmental authorities, quasi-governmental agencies, or private parties, for the purpose of providing utilities or other services to the Property, within the scope of the Easements, or otherwise under circumstances which are not consistent with the scope and effect of the Easements.

I. Maintenance of Easements. The Association shall have the power and authority to take such actions as may be necessary and appropriate to maintain the Easement Areas. The responsibility for maintaining facilities in any Easement Area may be transferred by the association in connection with any conveyance pursuant to Paragraph F. hereinabove, or otherwise, and in such event, the Association shall have the power and authority to enforce the maintenance obligations of the grantee or other party to such conveyance.

3. DELEGATION OF USE. Any owner may delegate, in accordance with the By-laws, his right of enjoyment to the Common Area and facilities to the

members of his family, his tenants, or contract purchasers who reside on the property.

4. **RIGHT OF ENTRY.** The Declarant, its successors and assigns, and the Association, through their duly authorized employees and contractors, shall have the right after reasonable notice of the owner thereof, to enter any lot at any reasonable hour on any day to perform such maintenance as may be authorized herein. However, nothing contained in this paragraph shall be deemed a requirement on the part of the Declarant to perform such maintenance.

ARTICLE V

MEMBERSHIP AND VOTING RIGHTS

1. Every owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may be separated from ownership of any Lot which is subject to assessment.
2. The Association shall have one class of voting membership:

Each Owner shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

ARTICLE VI

COVENANT FOR MAINTENANCE ASSESSMENT

1. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS. The Declarant for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be continuing lien upon the

property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

2. PURPOSE OF ASSESSMENTS. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Property and for the improvement and maintenance of the Common Areas and of the homes situated upon the premises.

3. MAXIMUM ANNUAL ASSESSMENT. Until January 1 the year immediately following the conveyance of the last Lot to an Owner, the maximum annual assessment shall be One Hundred Fifty Dollars (\$150.00) per Lot.

From and after January 1 of the year immediately following the conveyance of the last Lot to an Owner, the maximum annual assessment may be increased each year not more than 5% above the maximum assessment for the previous year without a vote of the member.

- (a) From and after January 1 of the year immediately following the conveyance of the last Lot of an Owner, the maximum annual assessment may be increased above 5% by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

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

4. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent to two-thirds (2/3) of the votes of Lots owned by members of the Homeowner's Association. Declarant shall have the sole responsibility of contracting for

maintenance services for the common areas for any year in which it owns at least one lot in the development.

ARTICLE VII

EXTERIOR MAINTENANCE

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

ARTICLE VIII

PARTY WALLS

1. GENERAL RULES OF LAW TO APPLY. Each wall which is built as part of the original construction of the homes upon the Property and placed on the dividing line between the Lots shall constitute a party wall, and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence of willful acts or omission shall apply thereto.
2. SHARING OF REPAIR AND MAINTENANCE. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.
3. DESTRUCTION BY FIRE OR OTHER CASUALTY. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.
4. WEATHERPROOFING. Notwithstanding any other provision of the Article, an Owner who by his negligent or willful act causes the party wall to be

exposed to the elements shall bear the whole cost of furnishing the necessary protection against the elements.

5. RIGHT TO CONTRIBUTION RUNS WITH THE LAND. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.
6. ARBITRATION. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

ARTICLE IX

GENERAL PROVISIONS

1. ENFORCEMENT. The Declarant, the Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provision of this Declaration. Failure by the Declarant, the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do thereafter.
2. SEVERABILITY. Invalidation of any one of these covenants or restrictions by judgement or court order shall in no way affect any other provisions which shall remain in full force and effect.
3. AMENDMENT. The Declarant shall retain the sole right of revision or amendment of these covenants and restrictions until such time as the Association is initiated by the Declarant. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by the Declarant prior to initiation of the Association. After the Association has become initiated by the Declarant, any amendment instrument must be signed by not less than ninety percent (90%) of the Lot Owners and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded.
4. SCRIVENER'S ERROR. Notwithstanding provisions elsewhere herein for amendments, any scrivener's error or omission may be corrected by the filing of any amendment to this Declaration by the Declarant until the time of conveyance

of the common areas to the Association without the express consent of the owner of any lot affected. Each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

5. NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTION 3 AND 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the presiding meeting. No such subsequent meeting shall be held more than sixty days following the preceding meeting.

6. UNIFORM RATE ASSESSMENT. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly, quarterly, or annual basis.

7. DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS: DUE DATES. The annual assessments provided for herein shall commence upon initiation of the Association by the Declarant, its successors or assigns. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

8. EFFECT OF NONPAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of six percent (6%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

9. SUBORDINATION OF LIEN TO MORTGAGES. The lien for the assessments provided herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lien thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessment thereafter becoming due or from the lien thereof.

IN WITNESS WHEREOF. The undersigned Foresight Development, LLC, has hereunto set its hand and seal on this 22 day of June, 2001

Foresight Development, LLC

By: Paul Spina Jr.

Member

By: Bobby Bynum

Member

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Bobby Bynum and Paul J. Spina Jr., whose name as Members of Foresight Development, LLC. is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day, that, being informed of the contents of the conveyance, he, in capacity as such Member and with full authority, executed the same voluntarily for and as the act of said incorporation.

Given under my hand and seal this 22 day of June 2001

Notary Public

My commission expires
Inst. # 2001-27838

07/05/2001-27838
02:50 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
023 NB 89.00