


DECLARATION
OF
PROTECTIVE COVENANTS
FOR
HAYESBURY BUSINESS PARK

Draft 10/18/02


20021021000517410 Pg 1/14 50.00
Shelby Cnty Judge of Probate, AL
10/21/2002 15:23:00 FILED/CERTIFIED

THIS DECLARATION, made this; 21ST day of OCTOBER 2002,
by FORESIGHT DEVELOPMENT, LLC., hereinafter referred to as "Declarant".

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain real property situated in Shelby County, Alabama, described as Hayesbury Business Park as recorded in map book 30 and page 71, said property being hereinafter referred to as the "Property"; and

WHEREAS, Declarant desires to subject the Property to the following covenants, conditions, and restrictions for the benefit of the Property and its present and subsequent owners;

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, sold, and conveyed subject to the following covenants, conditions, and restrictions, which shall attach to and run with the Property, and shall be binding on all parties having any right, title, or interest in any lot or Parcel contained within the Property, their heirs, successors, and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I

DEFINITIONS

1.01 Amendment. The term "Amendment" or "Amendments" shall mean and refer to any and all amendments to this Declaration as may from time to time be adopted pursuant to the terms and provisions of Article 7.04 and 7.07 hereof.

1.02 Committee. The term "Committee" shall mean and refer to the Architectural Control Committee provided in Article 3 hereof.

1.03 Declaration. The term "Declaration" shall mean and refer to this Declaration of Protective Covenants for Hayesbury Business Park, which shall be recorded in the office of the Judge of Probate of Shelby County, Alabama, together with all Amendments thereto.

1.04 Deed. The term "Deed" shall mean and refer to any deed, mortgage, lease, assignment or other instrument conveying any interest in a Parcel, or any part thereof.

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Bobby Bynum
3477 Indian Lake Way
Pelham, AL 35124

1.05 Developer. The term "Developer" shall mean and refer to Foresight Development LLC successors and assigns.

1.06 Owner. The term "Owner" or "Owners" shall mean and refer to the record owner, whether one or more persons or entities (including the Developer) , of a fee simple title to any Parcel, but excluding those having such interest merely as security for the payment of an obligation.

1.07 Parcel. The term "Parcel" shall mean and refer to any plot of land or parcel of real property within the Property.

1.08 Property. The term "Property" shall mean and refer to that certain real property situated in Shelby County, Alabama, described on Exhibit A attached hereto and incorporated by reference herein.

1.09 Structure. The term "Structure" or "Structures" shall mean and refer to the buildings to be erected on each Parcel.

ARTICLE II

MUTUALITY OF BENEFIT AND OBLIGATION

2.01 Mutuality of Benefit and Obligation. The provisions of this Declaration and any Amendments hereto are made: (a) for the mutual and reciprocal benefit of each and every Parcel and are intended to create mutual, equitable servitude's upon and in favor of each parcel; (b) to create reciprocal rights and obligations between the respective Owners and all future and subsequent Owners of any Parcel or part thereof, and (c) to create an understanding of contract and estate between the Owners, their heirs, successors and assigns.

ARTICLE III

ARCHITECTURAL CONTROL COMMITTEE

3.01 Membership. Initially, the Committee shall be composed of Foresight Development LLC, who shall serve until the sale of all Parcels by the Developer, at which time the Developer may, at his discretion, appoint up to three owner members to serve as the committee.

The Committee may designate one (1) representative to act for it. In the event of the death or resignation of any Member of the Committee, the remaining members shall have full authority to designate a successor. Neither the members of the Committee or its designated representative shall be entitled to any compensation for services performed pursuant to this covenant. The Committee shall function by majority vote and shall have the right to establish such rules and regulations concerning procedure, notice of meetings and all other matters which may come before the Committee.

3.02 Prior Approval of Plans. No Structure shall be commenced, erected, placed, moved onto or permitted to remain on any Parcel, nor shall any existing Structure upon any Parcel be altered in any way which materially changes the exterior appearance thereof, nor shall any new use be commenced on any Parcel, unless plans and specifications (including a description of any proposed new use) therefor shall have been submitted to and approved in writing by the Committee. Such plans and specifications shall be in such form and shall contain such information as may be required by said Committee, but in any event shall include (i) a site plan of the Parcel (including proposed front, rear and side setbacks of all Structures, the location thereof with reference to Structures on adjoining portions of the Property, and the number and location of all parking spaces and driveways on the Parcel; (ii) architectural plans showing the nature, exterior color scheme, kind, shape, height and materials of all proposed Structures; (iii) a grading plan for the particular Parcel; (iv) a drainage plan and (v) a plan for landscaping. Proposed plans should be transmitted to the address as set forth below:

**FORESIGHT DEVELOPMENT
3477 INDIAN LAKE WAY
PELHAM, ALABAMA 35124**

3.03 Basis for Disapproval of Plans. The Committee shall have the right to disapprove any plans and specifications submitted hereunder because of any of the following:

- (a) failure of any such plans or specifications to comply with any of the restrictions contained in this Declaration;
- (b) failure to include information in such plans and specifications as may have been reasonably requested;
- (c) objection to the exterior design, appearance or materials of any proposed structure;
- (d) incompatibility of any proposed Structure or use with existing Structures or uses upon other Parcels in the vicinity;

- (e) objections to the location of any proposed Structure upon any Parcel or with reference to other Parcels in the vicinity;
- (f) objection to the site plans, grading plans or drainage plan for any Parcel;
- (g) objection to the color scheme, finish, proportions, style of architecture, height, bulk, or appropriateness of any proposed Structure;
- (h) objection to parking areas proposed for any Parcel on the grounds of (1.) incompatibility to proposed uses and Structures on such Parcels, or (2.) the insufficiency of the size of parking areas in relation to the proposed use of the Parcel;
- (i) failure of plans to take into consideration the particular topography, vegetative characteristics, and natural environment of the Parcel, or
- (j) any other matter which, in the reasonable judgment of the committee, would render the proposed Structure, Structures, or uses inharmonious with the general plan of improvement of the Property or with Structures or uses located upon other Parcels within the vicinity.
- (k) No building in Hayesbury Business Park shall have exposed metal siding on such building.

Approval of any such plans shall terminate and be rendered void if construction is not begun within six (6) months after such approval unless six (6) month period is extended by agreement with the Committee, in which event the extended time period shall be applicable.

In any case where the Committee shall disapprove any plans and specifications submitted hereunder, or shall approve the same only as modified or upon specified conditions, such disapproval or qualified approval shall be accompanied by a statement of the grounds upon which such action was based. In any such case the Committee shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal can be prepared and submitted for approval.

3.04 Retention of Copy of Plans. Upon approval by the committee of any plans and specifications submitted hereunder, one (1) copy of such plans and specifications, as approved, shall be deposited for permanent record with the Committee, and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same.

3.05 Rules of the Committee; Effect of Approval and Disapproval. Time for Approval. The Committee may promulgate rules governing the form and content of plans to be submitted for approval or requiring specific improvements on Parcels, including without limitation, exterior lighting and planting, and may issue statements of policy with respect to approval or disapproval of the architectural styles or details, or other matters, which may be presented for approval. Such rules and statements of policy may be amended or revoked by the Committee at any time, and no inclusion in, omission from, or amendment of any such rule or statement shall be deemed to bind the Committee to approve or disapprove any feature or matter subject to approval, or to waive the exercise of the Committee's discretion as to any such matter, but no change of policy shall affect the finality of any approval granted prior to such change. Approval for use on any Parcel of any plans or specifications shall not be deemed a waiver of the Committee's rights, in its discretion, to disapprove such plans or specifications or any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use on any other Parcel or Parcels. Approval of any such plans and specifications relating to any Parcel, however, shall be final as to that Parcel and such approval may not be revoked or rescinded thereafter, provided, (i) that the Structures or uses shown or described on or in such plans and specifications do not violate any specific prohibition contained in the restrictions contained in this Declaration and (ii) that the plans and specifications, as approved, and any condition attached to any such approval, have been adhered to and complied with in regard to all structures on and uses of the Parcel in question. In the event the Committee falls to approve or disapprove any plans and specifications as herein provided within thirty (30) days after submission thereof, the same shall have been deemed to have been approved, as submitted, and no further action shall be required; provided, however, that the applicant shall have evidence of receipt of the required application package by the Committee.

3.06 Failure to Obtain Approval. If any Structure shall be altered, erected, placed or maintained upon any Parcel, or any new use commenced upon any Parcel, otherwise than in accordance with plans and specifications approved by the Committee pursuant to the provisions of this Article 3, such alteration, erection, maintenance or use shall be deemed to have been undertaken in violation of this Article 3, and without the approval required herein. Upon written notice from the Committee, any such structure so altered, erected, placed, or maintained upon any Parcel in violation shall be removed or re-altered, and any such use shall be immediately terminated, so as to extinguish such violation.

If fifteen days (15) after the notice of such violation the Owner

of the Parcel upon which such violation exists shall not have taken reasonable steps toward the removal or termination of the same, the Association, on behalf of the other Owners of each Parcel, shall have the right, through its agents and employees, to enter upon such Parcel and to take such steps as may be necessary to extinguish such violation and the cost thereof shall be a binding, personal obligation of such owner as well as a lien (enforceable in the same manner as a mortgage) upon the Parcel in question. The lien provided in this Article 3.06 shall not be valid as against a bona fide purchaser (or a bona fide mortgagee) of the Parcel in question unless a suit to enforce said lien shall have been filed in a court of record in Shelby County, Alabama, prior to the recordation of the deed (or mortgage) in the Office of the Judge of Probate of Shelby County, Alabama, conveying the Parcel in question to such purchaser (or subjecting the same to such mortgage) .

3.07 Inspection Rights. Any agent of the Committee may at any reasonable time or times enter upon and inspect any Parcel and any improvements thereon for the purpose of ascertaining whether the maintenance of such Parcel and the maintenance, construction, or alteration of Structures thereon are in compliance with the provisions hereof; and the Committee nor any such agent of the same shall be deemed to have committed a trespass or other wrongful act *by* reason of such entry or inspection.

3.08 Waiver of liability. The Committee, or any architect or agent of the foregoing, shall not be responsible in any way for any failure of any Structures to comply ~ requirements of this Declaration, any defects in any plans and specifications submitted, revised or approved in accordance with the foregoing provisions, nor for any structural or other defects in any work done according to such plans and specifications.

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3.09 Maintenance fees. The Committee shall also administer the payment and collection of all sums due from Lot Owners pursuant to the provisions of Article IV, paragraph 4.11 as hereinafter set out

ARTICLE VI

GENERAL COVENANTS AND RESTRICTIONS

- 4.01 Without the Prior Written Approval of the Committee:
- (a) no previously approved Structure shall be used for any purpose other than that for which it was originally designed;
 - (b) no Parcel shall be split, divided or subdivided for sale, resale, gift, transfer, or otherwise;
 - (c) to the extent of the interest of the Owner of a Parcel,

no external or outside antennas of any kind shall exist, be installed or otherwise maintained without absolute approval by the Committee of size, style and specific location of placement.

- (d) no construction equipment, boat, boat trailer, house trailer, trailer, motor home or any similar items shall be stored in the front of any Parcel for a period of time in excess of twenty-four (24) hours.

4.02 Animals. No birds, livestock, animals, or insects shall be kept or maintained on any Parcel without the express written consent of the Committee.

4.03 Signage Regulations. The signage regulations for the Hayesbury Business Park shall be as follows:

- (a) generally, single and multi tenant building developments within Hayesbury Business Park shall be allowed only one (1) free-standing ground sign or one (1) building sign to the fronting street. Multi rent buildings which are designed to provide individual exterior entry to the tenants will be allowed to incorporate tenant identification signage on the exterior of each tenant's space and said signage shall not exceed 12 square feet per tenant sign.
- (b) all free standing signs must be within the property line and extend no higher than 6 feet above the ground. These types of signs must incorporate the uniform brick selection for the Development, as indicated in section 4.12
- (c) no building sign may extend above the face of the building nor project more than 18 inches from the wall.
- (d) signs may be illuminated by non-flashing direct or indirect illumination and shall not contain moving parts.
- (e) the permitted sign face area shall be approved on an individual basis by the Committee and will be based on the following criteria:
 - 1. size (area of the subject parcel)
 - 2. size (height and scale of the building)
 - 3. The relationship of the subject sign to adjacent developments.
- (f) temporary signs shall be subject to the prior written approval of the Committee.

(g) all signs must be reviewed and approved by the Committee.

4.04 Temporary Structures. No temporary building, trailer, garage or building in the course of construction or other structure shall be used, temporarily, or permanently as a residence on any Parcel.

4.05 Accumulation of Refuse. No lumber, metals, or bulk materials shall be kept, stored or allowed to accumulate on any Parcel, except building materials during the course of construction of any approved Structure. No refuse or trash shall be kept, stored or allowed to accumulate, except between scheduled pick-ups and in accordance with the following:

4.06 Pipes. To the extent of the interest of the Owner of a Parcel, no water pipe, gas pipe, sewer pipe, or drainage pipe shall be installed or maintained above the surface of the ground on any Parcel, except hoses and movable pipes used for irrigation purposes.

4.07 Mining. To the extent of the interest of the Owner of a Parcel, and except for construction approved under Article 3 hereof, no Parcel shall be used for the purpose of boring, mining, quarrying, exploring for or removing oil or other hydrocarbons, minerals, gravel, earth, or otherwise.

4.08 Utilities. To the extent of the interest of the Owner of a Parcel, the Owner of a Parcel will not without the prior written consent of the Committee, erect or grant to any person, firm, or corporation the right, license or privilege to erect or alter any utilities within the Development without expressed written consent from the Committee.

4.09 Connection Points for Utility Service Lines. To the extent of the interest of the Owner of each Parcel, such Owners agree to connect utility service lines (including, but not limited to, gas, water, sewer and electricity) at points designated by the Committee.

4.10 Damage or Destruction. In the event of any damage or destruction to any Structure, the Owner of such Structure does hereby covenant and agree to promptly reconstruct, replace or repair any Structure on the Parcel caused by such damage or destruction in accordance with the provisions Article 3 hereof.

4.11 Street Lights, Monuments Maintenance and Lighting. The Developer may elect to construct street lights and a monument sign with lighting and landscaping near the entrances to the Property. In the event of such election(s), each Owner of a Lot within the Property shall bear their prorated share of the periodic costs of maintaining and operating such street lights, monuments, monument lighting and landscaping. The collection of such periodic costs shall be administered by the Committee.

In the event any Lot Owner fails to pay within thirty (30) days the charges assessed by the Committee under this paragraph, a lien shall be established on the Lot of such defaulting Owner which may be foreclosed as mortgages are foreclosed (with power of sale) in the State of Alabama. Such lien shall not prime the lien of any bona fide mortgagee holding a mortgage on the Lot of such delinquent Owner. Delinquent sums shall bear interest at the rate of 1.5% per month and such delinquent Lot Owner shall also pay all cost of collection including a reasonable attorney's fee.

4.12 Brick, Roofing, and Trim. In order to keep a harmonious continuity in appearance throughout the development, all exterior wall areas except for glass storefront areas, will consist of the same particular brick known as Woodward Blend, manufactured by Boral Brick Company. **There will be no substitutions accepted, unless expressly written by the Committee.** Roofs and trim work will be metal, of a Brown/Bronze color to match as closely as possible to the existing color and texture of existing roofs in the development.

ARTICLE V

ZONING AND SPECIFIC RESTRICTIONS

5.01 Zoning Laws. The Restrictions set forth in this Declaration shall not be taken as permitting any action or thing prohibited by the applicable zoning laws, or the laws, rules or regulations of any governmental authority, or by specific restrictions imposed by any deed or lease. In the event of any conflict, the most restrictive provision of such laws, rules, regulations, deeds, leases or the Restrictions shall be taken to govern and control.

5.02 Building Codes. All buildings shall comply with requirements of the Standard Building Code, the City of Pelham Building Inspection Department and the Shelby County Health Department.

5.63 Setbacks. No structure shall be located on any Parcel nearer to the front line or nearer to the side street line than the minimum building setback lines as required in the City of Pelham's Zoning Regulations for the subject zoning classification. For the purpose of this covenant, eaves, steps, and open porches shall not be construed to permit any portion of a building on a Parcel to encroach upon another.

5.04 Parking. Each Parcel Owner shall provide adequate off street parking to accommodate all existing and future needs for employees, visitors and company vehicles. Parking spaces shall meet the City of Pelham's off street parking requirements. Each space shall be a minimum of nine (9) feet wide unless designated as handicapped parking. Areas designated for automobile use shall not be used for trucks, commercial vehicles and/or material storage. No parking will be permitted in open fields or vacant lots. Inoperative or junk vehicles will be towed away at Owner's expense.

5.05 Off Street Loading. Truck and trailer loading/delivery areas shall be constructed in such a manner as not to block or partially obstruct any public streets during such operations. Additional screening and/or beautification may be required by the Committee adjacent to any loading facility.

5.06 Landscaping. Landscaping treatment shall be required on all Parcels. Every Parcel on which a building shall have been placed shall be maintained to keep the Parcel in a well kept condition. A minimum of twenty percent (20%) of each Parcel shall be landscaped for green treatment in a balanced mixture of grass lawns, ground cover, shade trees, plantings, evergreen hedge and flowers. General landscaping shall also include the use of walls, screening terraces and berms. Landscaping can be used to mark entrance points, parking areas, define service areas and property divisions as well as to enhance building scale and forms. Landscaping or Beautification Plans must be approved by, and variances are at the sole discretion of, the Committee.

Landscape treatment should not interfere with the line of sight or block needed views of buildings or their means of identification from the public street providing access thereto.

Each Parcel Owner will be responsible for the implementation and maintenance of landscaping within the normal right-of-way line of adjacent public streets. Landscaping materials shall generally consist of sod as prescribed by the Committee.

ARTICLE VI

EASEMENTS

6.01 Drainage. Except with prior written permission from the committee, drainage flow shall not be obstructed nor be diverted from drainage swales, storm sewers and/or utility easements as designated herein, or as may hereafter appear on any plat of record of Hayesbury Business Park. The Developer may cut drainage ways for surface water wherever and whenever such action may appear to Developer to be necessary in order to maintain reasonable standards of health, safety and appearance; provided, however, that the Developer's right to cut drainage ways shall terminate when the principle structure and approved landscaping on conveyed property shall have been completed. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any gradings of soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health and appearance. The provisions hereof shall not be construed to impose any obligation upon the Developer to cut such drainways.

6.02 Grading. The Developer may at any time make such cuts and fills upon any Parcel or other part of Hayesbury Business Park and to drain surface waters therefrom; and may assign such rights to Shelby County, Alabama or the City of Pelham, Alabama, or to any municipal or public authority; provided, however, that after plans for the principal Structure upon a Parcel shall have been approved by the Committee as provided herein. The rights of the Developer under this Article 6 shall terminate with respect to all parts of such Parcel other than the easement area thereof, except that the Committee or any municipal or public authority having jurisdiction shall thereafter have the right to maintain existing streets and drainage structures.

ARTICLE VII

GENERAL

7.01 Grantee's Acceptance. The grantee of any Parcel subject to the coverage of this Declaration, by acceptance of the deed or other instrument conveying an interest in or title to, or the execution of a contract for the purchase thereof, whether from the Developer or a subsequent Owner of such Parcel, shall accept such deed or other contract upon and subject to each and all of the provisions of this Declaration herein contained.

7.02 Indemnity for Damages. Each Parcel Owner and/or future Parcel Owner, in accepting a deed or contract for any Parcel subject to this Declaration, agrees to indemnify the Developer, the Association and the Committee for any damage caused by such Owner, or the contractor, agent, or employees of such Owner, to roads, streets, gutters, walkways or other aspects of public ways, including all surfacing thereon, or to water, drainage or storm sewer lines or sanitary sewer lines owned by the Developer, or for which the Developer or the Association has responsibility, at the time of such damage

7.03 Severability. Everyone of the provisions and restrictions contained in this Declaration is hereby declared to be independent of, and severable from, the rest of the provisions and restrictions and of and from every combination of the provisions and restrictions in this Declaration. Invalidation by any court of any provision or restriction in this Declaration shall in no way affect any of the other provisions or restrictions, which shall remain in full force and effect.

7.04 Right of Developer to Modify Restrictions With Respect to Unsold Parcels. With respect to any unsold Parcel, Developer may include in any contract or deed hereinafter made or entered into such modifications and/or additions to this Declaration as the Developer, in its discretion desires.

7.05 Effect of violation on Mortgage Lien. No violation of any of the provisions of this Declaration shall defeat or render invalid the lien of any mortgage made in good faith and for value upon any portion of the Property provided, however, that any mortgage in actual possession, or any purchaser at any mortgagee's or foreclosure sale shall be bound by and subject to the provisions of this Declaration as fully as any other Owner of any portion of the Property.

7.06 No Reverter. No restriction herein is intended to be, or shall be construed as, a condition subsequent or as creating a possibility of reverter.

7.07 Duration and Amendment. These covenants and restrictions shall run with the land and may be changed, modified, amended, altered or terminated only in accordance with the provisions hereof. These covenants and restrictions may be changed modified, amended, altered or terminated at any time within a period of fifteen (15) years from the date of these covenants and restrictions are recorded by a duly recorded written instrument executed by the then record owners (including mortgagees and other lien holders of record" if any) of ninety percent (90%) of the number of Parcels of Hayesbury Business Park. After fifteen (15) years from the date these covenants and restrictions are recorded, the same may be changed, modified, amended, altered or terminated by a duly recorded written instrument executed by the then record owners.

7.08 Enforcement. In the event of a violation or breach of any of the provisions of this Declaration or any Amendments hereto, by any Parcel Owner, or employee, agent, or lessee of such Owner, the Owner(s) of Parcel(s) , their successors and assigns, or any business party to whose benefit these covenants and restrictions inure shall have the right to proceed at law or in equity to compel compliance with the terms and conditions hereof, to prevent the violation or breach of said covenants and restrictions, to sue for and recover damages or other dues or to take all such courses of action at the same time, or such other legal remedy it may deem appropriate. No delay or failure on the part of any aggrieved party to initiate an available remedy set forth herein shall be held to be a waiver of that party or an estoppel of that party or of any other party to assert any right available to him upon the recurrence or continuation of said violation or the occurrence of a different violation.

Damages shall not be deemed adequate compensation for any breach or violation of any provision hereof, but any person or entity entitled to enforce any provision hereof shall be entitled specifically to relief by way of injunction as well as any other available relief at law or in equity.

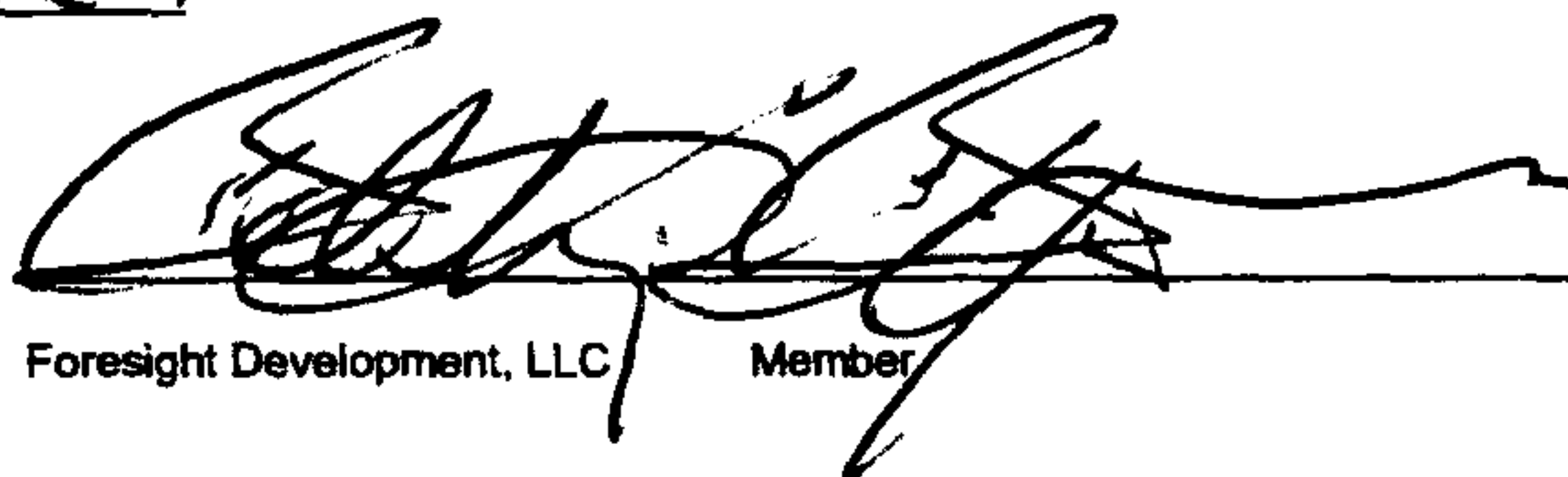
Any party to a proceeding who succeeds in enforcing the provisions , hereof, or enjoining the violation of any provision of this Declaration against a Parcel Owner, may be awarded a reasonable attorney's fee against such Parcel owner.

7.09 No Waiver. The failure of any party entitled to enforce any provision of this Declaration shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to such a violation or breach occurring prior or subsequent thereto; provided, however, that approval of plans pursuant to Article 3 shall be binding on any and all parties as a conclusive determination that such plans are in conformity with the requirements of this Declaration.

7.10 Not Homestead. The Property is not the homestead of the Developer or his spouse.

7.11 Right of Variance. The Committee retains the right to grant variances and exceptions to any of these covenants in an instance of unusual hardship or exceptional circumstance. The Committee will have absolute authority and control to grant such variances at its sole discretion.

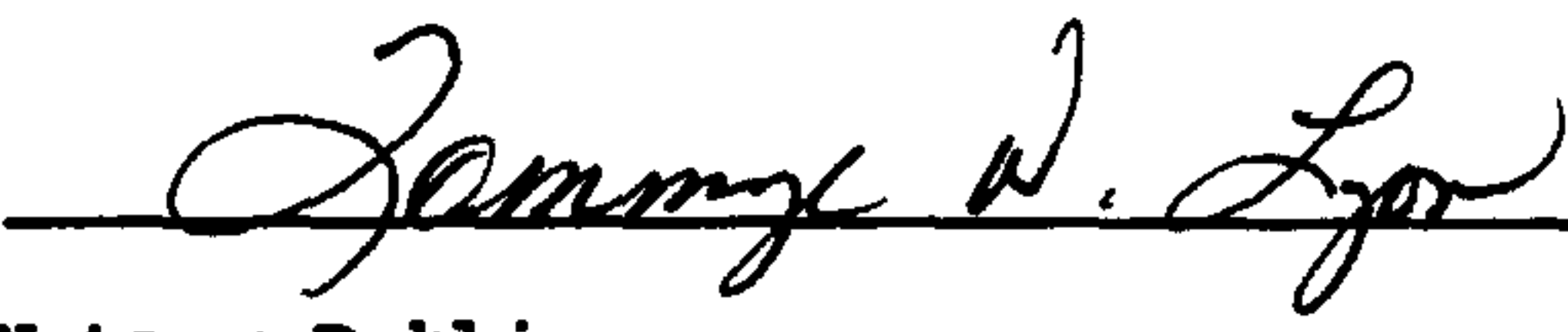
IN WITNESS WHEREOF, Foresight Development LLC, has caused this Declaration of Protective Covenants of Hayesbury Business Park to be properly executed by its duly authorized Member as of the 21st day Of OCTOBER, 2002


Foresight Development, LLC Member

STATE OF ALABAMA)
SHELBY COUNTY)

Given under my hand and official seal this 24th day of October, 2002

I, the undersigned, a Notary Public for the State of Alabama at Large do hereby certify that Bobby Lee Bynum, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me this day that, being informed of the contents of said conveyance, he executed the same voluntarily on the day the same bears date.


Notary Public

My Commission Expires 12-19-03