

STATE OF ALABAMA )

SHELBY COUNTY )

1279

THE FAIRWAYS AT RIVERCHASE SUBDIVISION  
DECLARATION OF PROTECTIVE  
COVENANTS, RESTRICTIONS, EASEMENTS,  
RIGHTS AND LIENS

This Declaration of Protective Covenants, Restrictions, Easements, Rights and Liens is made on this 4<sup>th</sup> day of August, 1988, by Harbar Construction Co., Inc., the owner of the property described below (hereinafter referred to as the "Owner"), which property is to be developed as a residential subdivision known as The Fairways At Riverchase.

WITNESSETH:

WHEREAS, the Owner is the fee simple owner of certain real property located in Shelby County, Alabama, which is more particularly described as follows (hereinafter referred to as the "Real Estate"):

Lots 1 through 64 according to the map as recorded in Map Volume 13, Page 18, in the Office of the Judge of Probate, Shelby County, Alabama.

WHEREAS, the Owner is also the fee simple owner of certain other property contiguous to the Real Estate located in Shelby County, Alabama, which is more particularly described as follows (hereinafter referred to as the "Common Area"):

Portion of lot # 48, easement allowing access to the mail boxes, as shown on the recorded map.

WHEREAS, the Owner intends to develop the Real Estate and the Common Area (the Real Estate and the Common Area being hereinafter sometimes collectively referred to as the "Property") pursuant to a general subdivision plan covering all of the Property and subject to certain protective covenants, restrictions, easements, rights, equitable servitudes, liens and charges, all running with the land.

WHEREAS, the plan for the Property provides for the Real Estate to be subdivided into lots on which single-family townhouse units will be constructed (hereinafter such lots being referred to as "Lots").

NOW, THEREFORE, in order to enhance and protect the value, attractiveness and desirability of the Property, and in furtherance of a general plan for the development, protection, maintenance, improvement and sale of the Property, the Owner hereby declares that all of the Property shall be subject to the following covenants, restrictions, easements, rights, equitable servitudes, liens and charges:

1. Existing Restrictions. Said land, being located within that certain area of land already covered by protective covenants is hereby specifically subjected to the Declaration of Protective Covenants, Agreements, Charges and Liens for Riverchase ("residential") as recorded in Book 14, page 536, and as amended by Amendment #1, recorded in Book 17, page 550, in the Probate Office of Shelby County, Alabama.

Harbar  
5502 - Caldwell Mill Rd  
72. [redacted] 25.1. [redacted]

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2. Land Use. The Real Estate shall be used exclusively for residential purposes. No building shall be constructed, placed or permitted to remain on any Lot other than one single-family dwelling not more than two and one-half stories in height (excluding any subterranean basement). No part of the Property shall be used or caused to be used in any way, directly or indirectly, for any business, commercial, manufacturing, warehousing or other such non-residential purpose, except, that the Owner may use the Property as a model home site, and may operate display and sales offices on the Property for the purpose of selling Lots for as long as the Owner continues to own any portion of the Property.

3. Parking. No automobile, truck, house trailer, camper, boat, motorcycle, dune buggy or any other type vehicle shall be parked or maintained on any permanent basis on the right-of-way or in front of any lot. Only vehicles used for day-to-day transportation [not to exceed two (2)] of the property owners, their families or invitees may be kept or stored on the property. No house trailers, campers, boats, dune buggys, motorcycles, or inoperatable vehicles may be kept or stored on the premises. Nothing contained in this paragraph shall preclude guests or invitees of any lot owner from parking in the front of any lot so long as such guest or invitee parks in the designated parking areas and parks only on a temporary basis. Ownership of each lot shall entitle the owner or owners thereof to the use of not more than two automobile parking spaces, which shall be as near and convenient to said lot as reasonably possible, together with the right of ingress and egress in and upon said parking area.

4. Dwelling Size. The ground floor area of any dwelling constructed on the real estate, exclusive of open porches and garages, shall be not less than 1850 square feet nor more than N.A. square feet.

5. Set-back Requirements. Dwellings shall be constructed and placed on a Lot in conformance with the minimum building set-back requirements set forth in applicable municipal or county ordinances from time to time in effect or as may be indicated on the recorded plat covering the Property.

6. Nuisances. No noxious or offensive activity, or activity which is, or may become, an unreasonable nuisance or annoyance to any Lot owner, shall be conducted or permitted in or around any portion of the Property. No loud noises or noxious odors shall be emitted or permitted on the Property.

7. Temporary Structures. No out-building, tent, shack or shed of any kind shall be placed upon any portion of the Property, either temporarily or permanently, other than temporary structures or offices erected by the Owner in connection with the construction and sale of townhouse units on the Lots. No garage, trailer, camper, motor home or recreation vehicle shall be used as a residence on the Property either temporarily or permanently. All fire wood storage must be behind residence, not in view of golf course on golf course lot. No basketball goals, swing sets or any outdoor play equipment are permitted.

8. Signs and Antennas. No sign, poster, display, billboard or other advertising device of any kind shall be erected or displayed to the public view on any portion of the Property, except one sign of not more than 6 square feet advertising a Lot for sale or rent may be placed on the Lot, and signs, regardless of size, used by the Owner to advertise the Property during the period in which the Owner is constructing and/or selling townhouse units on the Property, may be placed on the Property. No television or other antenna shall be placed or erected on the exterior of any residence.

9. Oil and Mining Operations. No exploration, drilling, development or refining of or for hydrocarbons, or quarrying or mining operations of any kind, shall be conducted or permitted upon or under any portion of the Property, and no wells, tanks, tunnels, surface mines or underground mines shall be permitted thereon or therein. No derrick or other structure designed for use in boring or drilling for water, oil or natural gas shall be erected, maintained or permitted upon the Property.

10. Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept upon the Property, except that usual and ordinary household pets (e.g. dogs, cats, fish and birds) may be kept on the Property, provided that such animals are not kept, bred or maintained for commercial purposes or in unreasonable numbers and except provided that such animals are not nuisances to other property owners. No animals shall be chained, staked out or left unattended outside any townhouse.

11. Garbage and Refuse Disposal. No portion of the Property shall be used or maintained as a dumping ground for wastes, rubbish or garbage. All such refuse stored or kept on the Property must be placed in sanitary containers, and no noxious or foul odor shall be permitted to emanate therefrom.

12. Fences, etc. No fence, hedge, wall or other obstruction shall be constructed or maintained on any lot.

13. Townhouse Easements. The Owner intends to construct a townhouse on each Lot, and the construction of such townhouses may require that certain eaves, roof overhangs, brick veneers, siding and other architectural features and building materials encroach upon or hang over contiguous Lots. Accordingly, there is hereby created, granted and reserved, as an appurtenance to each Lot, a perpetual easement over and across each Lot contiguous thereto for all such encroachments and overhangs, as well as for all encroachment and overhangs resulting from any natural movement or settling of any such townhouse. In addition, there is hereby created, granted and reserved to the owner or owners of each Lot a license and right of entry across contiguous Lots as may be reasonably needed to maintain and repair such encroaching or overhanging structures. If any townhouse shall be damaged or destroyed, the owner or owners thereof shall be permitted to repair and reconstruct such townhouse with encroachments and overhangs not more intrusive than those existing at the time of such damage or destruction and thereafter said license and right of entry shall continue in effect. In addition, owner plans to develop additional residential subdivisions in the future on property adjacent to the property referred to herein and reserves for itself an easement for ingress and egress over and across subject property as may be necessary for the construction and development of additional residential subdivisions on adjoining property. There is also reserved an easement for drainage as may be required resulting from the topography or lay of the land. Easements for installation and maintenance of utilities and drainage facilities are reserved and created as shown on the recorded map.

14. Covenants to Run with the Land. The covenants, restrictions, easements, rights, equitable servitudes, liens and charges set forth herein shall (a) run with the land (the Property); (b) be binding upon any and every person or entity having any right, title or interest in the Property, or any part thereof, and such person's or entity's heirs, executors, administrators, successors and assigns; (c) inure to the benefit of every portion of the Property and every interest therein; (d) inure to the benefit of, and be binding upon, the Owner, its successors in interest, and each grantee from the owner of any interest in the Property and such grantee's successors in interest; and (e) be binding and in effect for a period of twenty-five years from the date this instrument is recorded in the Probate Office of Shelby County, Alabama, after which period said covenants, restrictions, easements, rights, equitable servitudes, liens and charges shall be automatically extended for successive periods of ten years each unless an instrument amending or modifying this instrument, executed by a majority of the then owners of not less than three-fourths of the Lots, shall be recorded in the Probate Office of Shelby County, Alabama.

15. Application to Owner. Notwithstanding any provisions herein to the contrary, nothing contained in this instrument shall prevent, hinder or limit the Owner in any manner whatsoever in connection with the development of the Property and the construction and sale of townhouse units on the Property, and any provision having such effect shall be null, void and unenforceable against the Owner.

16. Consent of Lot Owners. Whenever the consent of the owners of the Lots is required with respect to any action described herein, the consent of the owner or owners of any Lot shall be deemed given if the record owner of such Lot (or a majority of such record owners, if more than one) shall evidence such consent in writing.

17. Prohibition Against Changing Exterior or Landscaping. Each lot owner shall, from time to time, paint (provided the same color is used) and otherwise maintain the exterior of his dwelling as needed. Such maintenance and painting shall be done in a manner harmonious with the remaining dwelling units and shall not be completed in such a manner, color, or design so as to disrupt the harmonious blending of the original architectural plans of the dwelling units. Each lot owner shall be prohibited from making any changes at all to the front exterior of their respective residences or making any changes at all in the landscaping, it being understood that all residences and landscaping are designed to blend harmoniously with each other. The prohibition against making any changes in the exterior or

landscaping shall include, but not be limited to, the prohibitions of adding storm doors or windows, removal of window inserts or window grill or installation of exterior intercoms or any other exterior appliance or fixture, or adding, deleting or changing the shrubbery and other plants. The placement of outdoor furniture, statuary, hanging baskets, etc., is also prohibited. In the event an owner of any Lot in the Properties shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Board of Directors, 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 costs of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject.

The maintenance and upkeep of all landscaping (including lawn mowing and shrubbery trimming) on each individual Lot shall be the responsibility of the Association and such cost shall be included in the monthly assessment paid by each Lot owner.

18. Common Areas. Title in those areas of the subject property referred to on the respective maps as common areas shall be retained by the owner until the owners of the respective lots form an owners association which will be responsible for the ownership, care, control and handling of these common areas or opened areas, at which time the owner intends to transfer said areas to the owners association. The owner will be responsible for the taxes on said common areas so long as it retains ownership thereof. The owners association shall be responsible for the maintenance and upkeep of the median of the entrance parkway. When additional land is developed, the other owners association shall share in the maintenance of the median.

19. For the purposes of accepting ownership of common areas, and for the purposes of protecting and assisting in the protection of the rights and privileges of the owners of the respective lots in the subdivision, and for the purposes of providing a vehicle to carry out joint and mutual obligations of the owners of the subdivision, it is understood and agreed that at such time as all lots in the subdivision have been sold to owners other than the owner (Developer) or at such earlier time if the owner wishes to participate, an association of lot owners will be formed, which association will be formed in such a manner as to make it a legal entity capable of contracting, deeding, and holding title, which association will be formed in such a manner as to give each respective lot owner an equal vote in the management of the affairs of the association, it being intended that either officers, directors, or an executive committee will be elected by the lot owners to carry out the day to day functions of the association. It is contemplated that the association of lot owners will be a non-profit corporation with the owner of each lot becoming a member of the corporation and being entitled to one vote on any issue to come before the association. Such association shall be formed within 45 days from notification from owner (Developer) to lot owners of record.

The association shall be responsible for the maintenance and upkeep of landscaping (including lawn mowing and shrubbery trimming) of each individual lot and shall be entitled to levy a monthly maintenance charge against each lot owner to cover the cost of such upkeep. A lien is hereby reserved and established in favor of the association and on each lot to secure the prompt payment of such monthly maintenance charge which said charge each individual lot owner agrees to pay by acceptance of the deed to his or her lot. The monthly maintenance charge in effect until December 31, 1988, shall not exceed \$ 35.00 per month. The lien of the monthly maintenance charge provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the maintenance charge lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such maintenance charge as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any maintenance charge thereafter becoming due or from the lien thereof. Prior to the formation of the association, all monthly maintenance charges shall be paid to Harbar Construction Co., Inc. Each lot owner understands and agrees to the fact that from time to time it may be necessary to water the lawn and shrubbery. Each lot owner agrees to allow the use of their water/water meter for such purposes.

20. The undersigned owner reserves the right to modify, release, amend, void, transfer or delegate all the right, reservations and restrictions herein set forth, or the right to modify, release, amend, void or transfer any one, or more, of the said herein set forth restrictions on lots in the said subdivision.

21. Invalidation of any one of these provisions or covenants by judgments, or court order, shall in no way affect any of the other provisions which shall remain in full force and effect.

22. Enforcement. If any lot owner, or their heirs or assigns shall violate, or attempt to violate, any of the covenants herein, it shall be lawful for any other person, or persons, owning real property situated in said development, or subdivision, to prosecute any proceedings at law in equity against the person, or persons, violating or attempting to violate any such covenant, and either to prevent him, or them, from so doing, or to recover damages or other dues from such violation.

IN WITNESS WHEREOF, the undersigned, Harbar Construction Co., Inc., has hereunto set its hand and seal on the 4<sup>TH</sup> day of AUGUST.

ATTEST:

HARBAR CONSTRUCTION CO., INC.

Denney Barrow  
Secretary-Treasurer

BY: Denney Barrow

STATE OF ALABAMA )

COUNTY OF JEFFERSON )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Denney Barrow whose name as Vice President of Harbar Construction Co., Inc., a corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal, this the 20<sup>th</sup> day of December 1988

Erline B. Mayhew  
Notary Public

(SEAL)

STATE OF ALA. SHIRLEY  
I CERTIFY THIS  
INSTRUMENT WAS FILED

88 DEC 20 PM 1:58

Shirley  
JUDGE OF PROBATE

12.50

12.50