

STATE OF ALABAMA
SHELBY COUNTY

HEATHERBROOKE OFFICE PARK PROTECTIVE COVENANTS

DECLARATION OF PROTECTIVE COVENANTS,
AGREEMENTS, EASEMENTS, AND CHARGES FOR
HEATHERBROOKE OFFICE PARK OF SHELBY COUNTY, ALABAMA

KNOW ALL MEN BY THESE PRESENTS, That:

WHEREAS, COLONIAL PROPERTIES, INC., an Alabama corporation, have heretofore acquired the fee title in approximately 13.2 acres of land described in Exhibit "A" annexed hereto and made a part hereof, said land being situated in Shelby County, Alabama, and referred to herein as "Heatherbrooke Office Park"; and,

WHEREAS, Heatherbrooke Office Park has presently been subdivided by map recorded at Map Book 12, Page 2, in the Office of the Judge of Probate of Shelby County, Alabama, and Developer intends to further subdivide said property into individual lots as the same are sold; and

WHEREAS, Developer desires to develop Heatherbrooke Office Park as a well-planned and architecturally harmonious office park development with individual lots owned by various purchasers; and

WHEREAS, Developer, in order to effectuate a fine quality office development, desires to subject, from time to time, portions of the Heatherbrook Office Park Property to the terms of This Declaration in connection with its use for commercial and office park uses and related development; and

NOW, THEREFORE, Developer does hereby proclaim, publish and declare This Declaration of Protective Covenants, Agreements, Easements and Charges for Heatherbrooke Office Park ("This Declaration") and declare it to be binding upon Developer and upon all parties acquiring any right, title or interest in any part of Heatherbrooke Office Park Property, which is subject to This Declaration.

ARTICLE I. DEFINITIONS

A. Architectural Committee: That Committee defined in Article V hereof.

B. Assessable Property: That part of Heatherbrook Office Park Property which is subjected to This Declaration except such parts or

Land Title

parts thereof as may from time to time constitute Open Spaces.

C. Office Park Parcel: Any unit, lot, part, tract, or office park parcel of Heatherbrooke Office Park Property designed, designated or used for an office purpose or use.

D. Development Stage: That period of time during which Developer maintains control of the Architectural Committee and prior to conveyance or any disposition by Developer of Open Space.

E. Deed: Any deed, assignment, lease or other instrument conveying fee title or a leasehold interest in any part of Heatherbrooke Office Park Property subjected to This Declaration.

F. Developer: The Developer of Heatherbrooke Office Park, Colonial Properties, Inc., an Alabama corporation, its successors and assigns.

G. Owner: A person or other entity who is a record owner of property within the area of Heatherbrooke Office Park.

H. Open Spaces or Common Areas: Heatherbrooke Office Park Property which is reserved by the Developers of Heatherbrooke Office Park Property or a part thereof, which is designated as an open space, undisturbed area, or common area.

I. Parcel: Includes only office park parcels.

J. Permanent Improvement: All buildings or structures and other matters and things which are taxable by the State of Alabama, or Shelby County as real property under applicable law.

K. Property or Subject Property or Owner's Property: That part of Heatherbrooke Office Park Property subject to This Declaration. Property shall mean and include all new permanent improvements built, installed or erected thereon; and the lots and land which constitute Heatherbrooke Office Park as described in This Declaration.

L. Resident: Owners, lessees of owners, and their employees, guests or invitees.

M. Restrictions: The covenants, agreements, easements, charges and liens created or imposed by this Declaration.

N. Heatherbrooke Office Park or Heatherbrook Office Park Property: The property described as Heatherbrooke Office Park in This Declaration. That part of Heatherbrook Office Park subjected to

This Declaration is referred to as Property, Subject Property, or Owners' Property.

O. Structure: Any thing or device (other than trees, shrubbery less than 2 feet high if in the form of a hedge and landscaping) the placement of which upon any Parcel may affect the appearance of such Parcel, including by way of illustration and not of limitation, any building, garage, porch, shed, greenhouse, coupe or cage, covered or uncovered patio, mailbox, swimming pool, clothesline, radio or television antenna, fence, curbing, paving, wall or hedge more than 2 feet in height, sign board, or any other temporary or permanent improvements to such Parcel. "Structure" shall also mean (1) any excavation, fill, ditch, diversion or dam or other thing or device which affects or alters the natural flow of surface waters from, upon or across any Parcel, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across any Parcel and (2) any change in the grade of any Parcel of more than 6 inches from that existing at the time of the purchase by each Owner. No structure can be constructed, placed upon, or maintained on any Parcel without the express written approval of the Architectural Committee as set forth in Paragraph V(B).

P. Tract: A contiguous piece of property under one ownership.

ARTICLE II. PERMISSIBLE CONDITIONS OR PROTECTIVE COVENANTS ON ADDITIONAL OPEN SPACE

Property reserved by the Developer as Open Spaces may be improved or unimproved land. The Developer may reserve such additional Open Spaces subject to easements for the construction, installation, maintenance, repair, use and access of roadways, service roads, or utilities sewer, or other public service facilities, and subject to the reserved right in favor of an Owner for reasonable use and access to facilitate the development of such Property and subject to other rights of way, easements, protective covenants and agreements of record. The designation of Property as Open Space may be changed or altered from time to time so long as Developer owns more than fifty (50%) percent of the acreage comprising Heatherbrooke Office Park.

ARTICLE III. MUTUALITY OF BENEFIT AND OBLIGATION

The Restrictions set forth herein are made for the mutual and reciprocal benefit of each and every part of Heatherbrooke Office Park Property subjected to the Restrictions (sometimes referred to as Property or Owner's

Property) and are intended to create mutual, equitable servitudes upon each such part of the Property and in favor of each and all such parts of the Property therein, to create reciprocal rights between the respective Owners and future Owners of such Property; and to create a privity of contract and estate between the grantees of said Property, their heirs, successors and assigns. All Owner's Property shall be held, transferred, sold, conveyed, used, leased, occupied, mortgaged or otherwise encumbered subject to all of the terms and provisions of This Declaration.

ARTICLE IV. COVENANTS FOR MAINTENANCE

A. Each Owner shall keep all Parcels owned by him and all Permanent Improvements therein or thereon 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 including sanitary sewer, all in a manner and with such frequency as is consistent with good property management. If, in the opinion of the Architectural Committee as hereinafter defined, any Owner fails to perform the duties imposed by the preceding sentence, after fifteen days written notice from the Architectural Committee or Developer to Owner to remedy the condition in question, Developer shall have the right, through its agents and employees, to enter upon the Parcel in question and to repair, maintain, repaint and restore the Parcel or such improvements 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. Any landscaping provided by the Architectural Committee cannot be changed pursuant to this Section.

B. The lien provided in Paragraph A above shall ~~not~~ be valid as against a bonafide purchaser (or bonafide mortgagee) of the Parcel in question unless a suit to enforce said lien shall have been filed in the Court of record in Shelby County, Alabama, prior to the recordation among the land records of Shelby County of the deed or mortgage conveying the Parcel in question to such a purchaser or subjecting the same to such mortgage.

ARTICLE V. ARCHITECTURAL COMMITTEE; ARCHITECTURAL CONTROL

A. Architectural Committee: The Architectural Committee shall be composed of those three (3) or more individuals so designated from time to

time by Developer during the Development Stage. The affirmative vote of a majority of the membership of the Architectural Committee shall be required in order to adopt or promulgate any rule or regulation, or to make any findings, determinations, ruling or order, or to issue any permit, authorization or approval pursuant to directives or authorizations contained herein, with regard to review of plans and specifications as set forth in this Article. With regard to all other specific matters (other than the promulgation of rules and regulations) as may be specified by resolution of the entire Architectural Committee, any two members of the Architectural Committee shall be authorized to exercise the full authority granted herein to the Architectural Committee. Any approval by two such members of any plans and specifications submitted under this Article, or the granting of any approval, permit or authorization by such members and according with the terms hereof, shall be final and binding. At least a majority of the Architectural Committee shall be required for any actions. At the conclusion of the development stage, Developer intends to establish an Owners Association which will then select the members of the Architectural Committee. In establishing such Owners Association, the Owners of each Parcel shall vote based on their pro rata percentage of the total acreage of Assessable Property. Accordingly, each Owner's percentage vote will be determined by a fraction, the numerator of which is the acreage owned by said Owner and the denominator of which is 11.7 acres (the total acreage in Heatherbrooke Office Park net of roadways).

BOOK 352 PAGE 174

B. Approval Required: No Structure as defined herein 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) thereof shall have been submitted to and approved in writing by the Architectural Committee. Such plans and specifications shall be in such form and shall contain such information, as may be required by the Architectural Committee, but in any event shall include (1) a site plan of the Parcel showing the nature, exterior color scheme, kind, shape, height, materials and location with respect to the particular Parcel (including proposed front, rear and side setbacks and free space if any are

proposed) 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; (2) a grading plan for the particular Parcel; (3) a drainage plan, and (4) plan for landscaping. The criteria which each set of plans and specifications should meet include the following:

1. **Setback Restrictions:** Any building or Permanent Improvements on each Parcel shall have the following setback restrictions, each measured from the property line:

Front	45 feet
Rear	40 feet
Side	20 feet

2. **Height:** No building shall exceed the lesser of three (3) stories or 45 feet in height measured from the foundation.

3. **Size:** No building shall contain less than 2,000 square feet of gross building area nor more than 15,000 square feet of gross building area.

4. **Exterior:** All exteriors shall be of Wood mold brick manufactured by Bickerstaff.

5. **Shingles:** All buildings shall utilize Timberline shingles.

6. **Landscaping:** All grass and shrubbery shall be elected through the use of underground sprinkler systems with automatic controls to assure regular watering.

7. **Signage:**

(a) No off-premises promotional signs or billboards shall be located in Heatherbrooke Office Park.

(b) Generally, single and multi-tenant building developments in the planned Heatherbrooke Office Park shall be allowed only one free standing ground sign or one building sign to fronting street. Multi-tenant 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 entry door and said signage shall not exceed one square foot per tenant sign.

(c) In accordance with This Declaration, signs subject to review and approval by the Architectural Committee shall not be erected or displayed without prior approval of said Committee. The only signs exempt from the Committee's review and approval are government signs, public notices, instructional signs, traffic control and warning signs, symbols, and insignias as may be necessary and required by governmental entities for the public health, safety, and welfare.

(d) All free standing signs must be within the property line and extend no higher than 5 feet above the ground. (No artificial earth mound may be constructed to raise the height of the sign.)

(e) No building sign may extend above the face of the building nor project more than 18 inches from the wall.

(f) Signs in the planned office area may be illuminated by non-flashing direct or indirect illumination and shall not contain moving parts.

(g) The permitted sign face area for development/parcels in the planned office area shall be approved on an individual basis by the Architectural Committee and will be based on the following:

- a. Size (acres of the development);
- b. Size, height, and scale of the building;
- c. Location of the sign in relation to the adjacent street(s);
- d. The relationship of the subject sign and development to adjacent developments.

C. Basis For Disapproval of Plans: The Architectural Committee shall have the right to disapprove any plans and specifications submitted hereunder because of any of the following: (1) failure of such plans or specifications to comply with This Declaration; (2) failure to include information in such plans and specifications as may have been reasonably requested; (3) objection to the exterior design, appearance or materials of any proposed Structure; (4) incompatibility of any proposed Structure or use with existing Structures or uses upon other Parcels in the vicinity; (5) objections to the location of any proposed Structure upon any Parcel with reference to other Parcels in the vicinity; (6) objections to the site plans, grading plans or drainage plans for any Parcel; (7) objection to the color scheme, finish, proportions, style of architecture, height, bulk or appropriateness of any proposed structure; (8) objection to parking areas proposed for any Parcel on the grounds of (a) incompatibility to proposed uses and Structures on such Parcels, or (b) the insufficiency of the size of parking areas in relation to the proposed use of the Parcel; (9) failure of plans to take into consideration the particular topography, vegetative characteristics, and natural environment of the Parcel; or (10) any other matter which, in the judgment of the Architectural 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 in the vicinity.

Approval of any such plans shall terminate and be rendered void if construction is not begun within 6 months after such approval unless such 6 month period is extended by agreement with the Architectural Committee, in

which event the extended time period shall be applicable.

In any case where the Architectural 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 Architectural 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.

D. Retention of Copy of Plans: Upon approval by the Architectural Committee of any plans and specifications, as approved, such plans and specifications shall be deposited for permanent record with the Architectural Committee, and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitted same.

E. Rules of Architectural Committee; Effect of Approval and Disapproval; Time for Approval:

The Architectural 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 planning, 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 such statements of policy may be amended or revoked by the Architectural Committee at any time, and no inclusion in, omission from or amendment of any such rule or statement shall be deemed to bind the Architectural Committee at any time, and no inclusion in, omission from or amendment of any such rule or statement shall be deemed to bind the Architectural Committee to approve or disapprove any feature or matter subject to approval, or to waive the exercise of the Architectural Committee's discretions 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 Architectural Committee's right, 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, (1) that the Structures or uses shown or described on or in such plans and specifications do not violate any specific prohibition contained in the protective covenants, and (2) 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 Architectural Committee fails to approve or disapprove any plans and specifications herein provided within 45 days after submission thereof, the same shall be deemed to have been approved, as submitted, and no further action shall be required.

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

If 30 days after the notice of such violation, the Owner of the Parcel upon which such violation exists shall not have taken reasonable steps towards the removal or termination of the same, Developer or Architectural Committee 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 Section shall not be valid as against a bonafide purchaser (or bonafide 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 prior to the recordation among the land records of Shelby County of the deed (or subjecting the same to such mortgage).

G. Certificate of Compliance: Upon completion of the construction or alteration of any Structure in accordance with plans and specifications

approved by the Architectural Committee, the Architectural Committee shall, upon written request of the Owner thereof, issue a certificate of compliance in form suitable for recordation, identifying such Structure and the Parcel on which such Structure is placed, and stating that the plans and specifications, the location of such Structure, and the use or uses to be conducted thereon have been approved and that such Structure complies with the requirements of the Committee. Preparation and recording of such certificate shall be at the expense of such Owner. Any certificate of compliance issued in accordance with the provisions of this Section shall be prima facie evidence of the facts therein stated, and as to any purchaser or encumbrancer in good faith and for value, or as to any title insurer, such certificate shall be conclusive evidence that all Structures on the Parcel, and the use or uses described therein comply with the requirements of this Article, and with all other requirements of This Declaration as to which the Architectural Committee exercises any discretionary or interpretive powers.

H. **Inspection Rights:** Any agent of Developer or the Architectural 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 neither Developer nor the Architectural Committee nor any such agent shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

I. **Annexation:** No Owner shall consent to or otherwise approve of the annexation of any part of Heatherbrooke Office Park into a municipality without the approval of the Owners of 2/3 in acreage of Heatherbrooke Office Park.

J. **Waiver of Liability:** Neither the Architectural Committee nor any Architectural agent thereof nor Developer nor Colonial Properties, Inc., an Alabama corporation, nor any agent or employee of any of the foregoing shall be responsible in any way for any failure of Structures to comply with requirements of This Declaration, although a certificate of compliance has been issued, any defects in plans and specifications submitted, revised or approved in accordance with the foregoing provisions, nor any structural or

other defects in any work done according to such plans and specifications and all persons submitting any such plans and specifications 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 said entities and persons for any and every such cause.

ARTICLE VI. GENERAL RESERVATIONS AND PROTECTIVE COVENANTS

A. Without The Prior Written Approval of the Architectural Committee:

1. No previously approved Structure shall be used for any purpose other than that for which it was originally designed.
2. To the extent of the interest of the Owner of a Parcel, no facilities, including poles and wires, for the transmission of electricity, telephone messages and the like shall be placed or maintained above the surface of the ground on any Parcel and no external or outside antennas of any kind shall be maintained; and
3. No boat, boat trailer, house trailer, trailer, motor home or any similar items shall be stored in the open on any Parcel for a period of time in excess of 24 hours.

B. The Architectural Committee, in its discretion, may adopt and promulgate rules and regulations regarding the preservation of trees and other natural resources and wildlife upon the Property. If it shall deem it appropriate, the Architectural Committee may mark certain trees, regardless of size, as not removable without written authorization. In carrying out the provisions of this Section, Developer, and the Architectural Committee and the respective agents of each may come upon any Parcel during reasonable hours for the purpose of inspecting or marking trees or in relation to the enforcement and administration of any rules and regulations adopted and promulgated pursuant to the provisions hereof. Neither the Architectural Committee nor Developer nor their respective agents shall be deemed to have committed a trespass or wrongful act by reason of any such entry or inspection.

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

D. Signs: No sign or other advertising device of any nature shall be placed upon any Parcel except as herein provided. The Architectural Committee may in its discretion, adopt and promulgate rules and regulations relating to signs which may be employed. Signs and other advertising devices may be erected and maintained upon any portion of the Property designated for office use if approved by the Architectural Committee, as to color, location, nature, size and other characteristics of such signs or or devices. More detailed sign criteria is set forth in Article V.B. above.

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

F. 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: if trash or other refuse is to be disposed of by being picked up and carried away on a regular and recurring basis, containers may be placed in the open, on any day that a pick up is to be made, at such place on the Parcel so as to provide access to persons making such pick up. At all other times, such container shall be stored in such a manner so that they cannot be seen from adjacent and surrounding property. The Architectural Committee, in its discretion, may adopt and promulgate reasonable rules and regulations relating to the size, shape, color and type of container permitted and the manner of storage of the same on the Property.

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

H. Mining: To the extent of the interest of the Owner of a Parcel, no Parcel shall be used for the purpose of boring, mining, coring, exploring for or removing oil or other hydrocarbons, minerals, gravel or earth.

I. Maintenance of Hedges and Plants: The Developer shall have the right to enter upon any Parcel and trim or prune at the expense of the Owner

any hedge or other planting, which in the opinion of the Developer by reason of its location upon the Parcel or the height to which it is permitted to grow, is unreasonably detrimental to the adjoining property or obscures the view of street traffic or is unattractive in appearance; provided, however, that the Owner shall be given 15 days prior written notice of such action.

J. **Underground Utilities:** To the extent of the interest of the Owner of a Parcel, the Owner of a Parcel will not erect or grant to any person, firm or corporation the right, license or privilege to erect or use or permit the use of overhead wires, poles or overhead facilities of any kind for electrical or telephone services on said real estate (except such poles and overhead facilities as may be required at those places where distribution facilities enter and leave the particular area) without the prior written consent of the Architectural Committee. Nothing herein shall be construed to prohibit overhead street lighting or ornamental yard lighting, where serviced by underground wires or cables.

ARTICLE VII. SPECIFIC PROTECTIVE COVENANTS

The Restrictions shall not be taken as permitting any action or thing prohibited by the applicable land laws or the laws, rules, regulation 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 protective covenants shall be taken to govern and control.

ARTICLE VIII. EASEMENTS

A. Except with prior written permission from Developer, or (when so designated by Developer) from the Architectural 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 in which reference is made to This Declaration. Developer may cut drainways 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 Developer's right to cut drainways on any Owner's Property shall terminate when the principal Structure and approved landscaping on such Property have been completed. These easements and rights expressly include the right to cutting trees, bushes

or shrubbery, make any gradings of the 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 Developer to cut such drainways.

B. Developer may at any time make such cuts and fills upon any Parcel or other part of the Heatherbrook Office Park Property and do such grading and moving of earth as, in its judgment, may be necessary to improve or maintain the streets in or adjacent to the Heatherbrook Office Park Property and to drain surface waters therefrom; and may assign such rights to Shelby County 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 Architectural Committee as provided herein, the rights of the Developer under this Section shall terminate with respect to all parts of such Parcel other than the easement area thereof, except that Developer or any such municipal or public authority shall thereafter have the right to maintain existing streets and drainage Structures. Nothing herein shall be deemed to require or place any duty on Developer to alter, change, maintain, repair or be liable for roadways, streets or adjacent areas.

ARTICLE IX. GENERAL

A. Grantees 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 Developer or a subsequent Owner of such Parcel, shall accept such deed or other contract upon subject to each and all of the provisions of This Declaration contained herein.

B. All Owner's Property: All Owner's Property bears the burdens and enjoys the benefits of This Declaration. Every person who is an Owner of a fee interest in any portion of the Heatherbrooke Office Park Property does by reason of taking such title agree to all of the terms and provisions of this Declaration (except as they may be modified in the deed to such Property, subject to the limitations as herein set out). All present and later added Owner's Property is subject to the burdens and shall enjoy the benefits made applicable hereunder to such Property.

C. **Indemnity For Damages:** Each and every Parcel Owner and future Parcel Owner, in accepting a deed or contract for any Parcel subject to these protective covenants, agrees to indemnify Developer 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 publicways, including all surfacing thereon, or to water, drainage or storm sewer lines or sanitary sewer lines owned by Developer, or for which Developer has responsibility, at the time of such drainage.

D. **Severability:** Every one of the provisions and Restrictions is hereby declared to be independent of, and severable from the rest of the provisions and restrictions and from every combination of the provisions and Restrictions. Invalidation by any court of any provision or Restrictions in This Declaration shall in no way affect any of the other provisions or Restrictions which shall remain in full force and effect.

E. **Right of Developer to Modify Protective Covenants With Respect to Unsold Parcels:** With respect to any unsold Parcel, Developer may include in any contract or deed herein and after made or entered into such modifications and/or additions to these Restrictions as Developer, in his discretion, desires.

F. **Captions:** The captions preceding the various paragraphs and subparagraphs of these Restrictions are for the convenience of reference only, and none of them shall be used as an aide to the construction of any provision of This Declaration. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the feminine or to the neuter.

G. **Effect of Violation on Mortgage Lien:** No violation of any of This Declaration shall defy 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 This Declaration as fully as any other Owner of any portion of the Property.

H. **No Reverter:** No provision of This Declaration herein is intended to be or shall be construed as a condition subsequent or as creating a possibility of reverter.

I. **Duration and Amendment:** The provisions contained in This Declaration shall run with and bind the Property, shall inure to the benefit of

and shall be enforceable by the Developer, the Architectural Committee, and the Owner of any Office Park Parcel, included in the Property, their respective legal representatives, heirs, successors and assigns until the 31st day of December, 2008, after which time said protective covenants shall be automatically extended for a successive period of ten (10) years. This Declaration may not be amended in any respect except by the execution of an instrument signed by not less than 2/3 of the Owners according to their respective holdings in acreage. Said instrument, signed by those Property Owners whose holdings in acreage equal or exceed 2/3 of the Subject Property, shall be filed for recording in the Probate Office Shelby County, Alabama, or in such other place of recording as may be appropriate at the time of the execution of such instrument.

The provisions contained in This Declaration are made for the mutual and reciprocal benefit for each and every part of Heatherbrooke Office Park Property, subject to the Restrictions. This Declaration is intended to create mutual, equitable servitudes upon each part of the Property and in favor of each and all such parts of the Property therein, to create reciprocal rights between the respective Owners and future Owners of such Property; and to create a privity of contract and estate between the Grantees of said Property, their heirs, successors and assigns. After the 31st day of December in the year 2008, This Declaration may be amended and/or terminated in its entirety by an instrument signed by not less than 55% of the Owners, which instrument shall be filed for recording among the land records of Shelby County, Alabama, or in such other place of recording as may be appropriate at the time of the execution of such instrument.

J. Enforcement: In the event of a violation or breach of any of the provisions of This Declaration or any amendments thereto by any Owner, or employee, agent, or lessee of such Owner, the Owners or Owner of commercial Parcel of Parcels, Developer, their successors and assigns or any business party to whose benefit This Declaration inures 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 This Declaration, to sue for and recover damages or other dues, or 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 any available remedies set forth herein shall be held to be a waiver of that party or an estoppel of that party or any other party to assert any right available to him upon the recurrence or continuation of said violation or the occurrence of 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 the relief by way of an injunction as well as any other available relief either at law or in equity.

Any party to a proceeding who succeeds in enforcing a protective covenant or enjoining the violation of a Restriction against Owner may be awarded a reasonable attorney's fee against such Owner.

K. Interpretation by Developer and Architectural Control Committee. Developer and Architectural Committee shall have the right to construe and interpret This Declaration, and in absence of an adjudication by a court of competent jurisdiction to the contrary, its construction or interpretation shall be final and binding as to all persons or property benefited or bound by the provisions hereof.

ARTICLE X. DEVELOPMENT STAGE AND CONVEYANCE OF OPEN SPACES

(A) During the Development Stage, all rights, authorities and discretions granted in this document shall be exercisable by the Developer or the Architectural Committee appointed by Developer.

(B) At the end of the Development Stage or at any other time as Developer, in its sole discretion may decide, Developer may cause an Owners Association (in the form of an unincorporated association or a non-profit corporation) to be formed and may convey the Open Spaces to such Owners Association. The Developer at that time shall establish the rules for the voting by Owners and all mechanics for control of the Open Spaces. Upon such conveyance, the Owners Association shall succeed to all of the rights, authorities and discretions granted to Developer herein and Developer shall be deemed completely released from any and all further obligations or liabilities. From and after such conveyance all references herein to Developer shall be changed to refer to the Owners Association.

Because it is anticipated that the Open Spaces may consist only of limited

landscaping and park identification signs, title may be transferred to the local governing body or an Owner rather than to the Owners Association. Notwithstanding that fact, the Owners Association shall still elect the Architectural Committee which will be authorized to take all actions and have such authority as is set forth in this document, including the right to assess Owners for the maintenance of the Open Spaces.

ARTICLE XI. ASSESSMENTS

It is understood that certain expenses will be required to develop and maintain the Open Spaces. During the development phase, any Owner will be assessed for their prorata portion of such expense by Developer. Subsequent to the conveyance of the Open Spaces by Developer to the Owners Association, such assessments will be made by the Owners Association. The determination of the equitable basis for assessing Owners shall be determined by multiplying the total expenses by a fraction, the numerator of which is the acreage owned by each Owner and the denominator of which is 11.7 acres (the total acreage of Heatherbrooke Office Park net of roadways). In addition to assessments for construction and maintenance of common areas, each Owner as a condition of its purchase of a Parcel does agree to pay the share allocated to such Parcel of the capacity purchase, demand charge, and usage charge for sewer service from the Birmingham Water Works Board or its successors based upon gallons allocated to such Parcel.

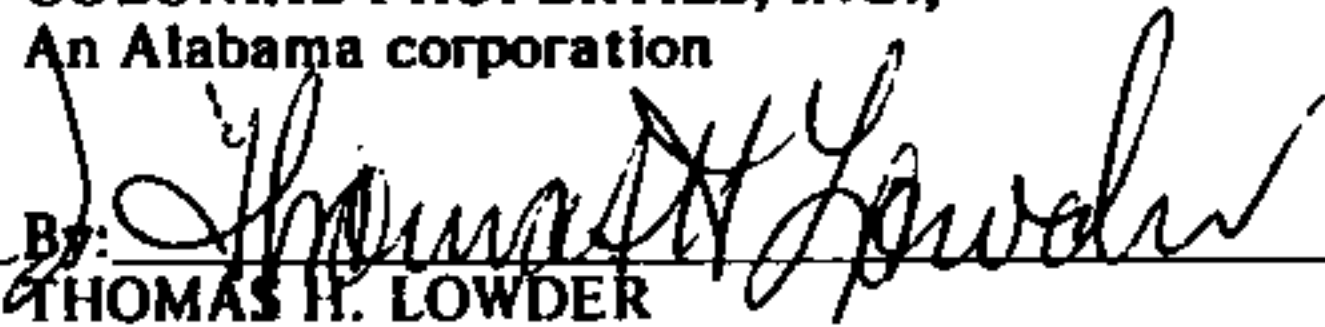
ARTICLE XII. WAIVER

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

ATTEST:



COLONIAL PROPERTIES, INC.,
An Alabama corporation

By: 
THOMAS H. LOWDER
Its President

STATE OF ALABAMA)
SHELBY COUNTY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Thomas H. Lowder, whose name as President of Colonial Properties, Inc., an Alabama corporation, is signed to the foregoing Declaration, and who is known to me, acknowledged before me on this day, that, being informed of the contents thereof, 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 9th day of May, 1988.

Karen A. Yoder
NOTARY PUBLIC 10

My Commission Expires: 12/5/88
Alabama at Large

BOOK 352 PAGE 188

EXHIBIT "A"

Lots 1-A, 1-B, 1-C, 2-B, 3 and 4 of Heatherbrooke Office Park, and as such lots may be resubdivided, as recorded in Map Book 12, Page 2 in the Office of the Judge of Probate of Shelby County, Alabama.

Lot 2A is not subject to these Restrictive Covenants at the time of the recording of these Covenants.

5124j

1. Doc Fee	_____
2. Mfg Tax	_____
3. Recording Fee	21.00
4. Notary Fee	3.00
5. No Tax Fee	_____
6. Certified Fee	1.00
Total	54.00

STATE OF ALABAMA
I CERTIFY THIS
INSTRUMENT WAS FILED

91 JUL -8 PM 3:09

JUDGE OF PROBATE

21,326