

STATE OF ALABAMA

SHELBY COUNTY

DECLARATION OF PROTECTIVE COVENANTS

THIS DECLARATION made on this the 1st day of February, 1994, by Carter Homes and Development, Inc. and B & S Land Development, Inc., (hereinafter referred to as Owner).

WITNESSETH:

WHEREAS, the undersigned Owner owns in fee simple the following described real estate situated in Shelby County, Alabama, to-wit:

Lots 27 through 38, Kingwood Townhomes, Phase One as recorded in Map Book 9, Page 18 in the office of the Judge of Probate, Shelby County, Alabama.

WHEREAS, the Owner is desirous of establishing certain covenants and restrictions applicable to said real estate.

NOW, THEREFORE, the Owner hereby declares that the above described real estate shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, conditions, and rights which are for the purpose of creating uniformity, protecting the value and desirability of the above described property, and which shall run with the said real estate and be binding on all parties having any right, title, or interest in the above described property or any part thereof, their heirs, successors, and assigns and shall inure to the benefit of each owner thereof.

1. LAND USE AND BUILDING TYPE. No lot shall be used except for residential purposes. No building shall be erected, placed, or permitted to remain on any lot other than one single-family dwelling.

2. FENCES. No fences or walls shall be erected nor growing hedge rows planted and maintained forward of the rear corners of the residential building located on the lot. No fences or walls shall be constructed either on the side or rear of any lot that shall exceed five (5) feet in height from the improved grades of the lot. No chain link fences or fences made of metal or wire shall be permitted. Wooden fences and lattice work design brick walls are acceptable subject to the Architectural Control Committee's approval as further enunciated in paragraph 14 of these covenants.

3. EASEMENTS. Easements to each individual lot for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot except for those improvements for which a public authority or utility company is responsible.

4. WIRING AND UTILITY EASEMENTS. All the above described property is subject to utility easements heretofore executed by the undersigned Owner in favor of Alabama Power Company and South Central Bell Telephone and Telegraph Company as recorded in the Probate Office of Shelby County, Alabama.

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5. **NUISANCES.** No noxious or offensive activity shall be carried on upon any lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

6. **TEMPORARY AND AUXILIARY STRUCTURES.** No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other outbuilding shall be used on any lot at any time as a residence either temporarily or permanently. No auxiliary structures may be placed on a lot unless same has been approved by the Architectural Control Committee.

7. **SIGNS.** No sign of any kind shall be displayed to the public view in any lot except one (1) sign of not more than five (5) square feet advertising the property for sale or rent or sign used by a builder to advertise the property during the construction and sales period. The only exception to said paragraph is permanent sign to be erected by builder at entrance of subdivision.

8. **OIL AND MINING OPERATIONS.** No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted upon or in any lot nor shall oil wells, tanks, tunnels, mineral excavation, or shafts be permitted upon or in any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained, or permitted upon any lot.

9. **LIVESTOCK.** No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any lot, except that dogs, cats, or other household pets may be kept provided they are not kept, bred, or maintained for any commercial purpose.

10. **GARBAGE AND REFUSE DISPOSAL.** No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage, or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

11. **COVENANT WITH RESPECT TO MAINTENANCE OF LOT AND IMPROVEMENTS.** Each owner shall keep his or her lot and the structure thereon in good order and repair including, but not limited to, 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 the structure all in a manner and with such frequency as is consistent with good property management.

No owner of any lot shall modify the structure on his or her lot by adding a room or rooms, changing the roof lines, adding decks, materially changing or altering the color or making other alterations in the exterior appearance of the structure without the express written approval of the Planning Commission to The City of Helena, Alabama. Each owner, in acquiring title to his or her respective lot, acknowledges that the decor, color scheme, and design have been selected in such a manner to be consistent and harmonious with other homes within the subdivision and agrees to maintain his or her respective lot and structure in such a manner as to maintain and perpetuate the visual harmony within the subdivision.

12. **DAMAGE OR DESTRUCTION.** In the event of damage or destruction to any structure within the subdivision, the respective owner thereof agrees as follows:

- (i) In the event of total destruction, the owner shall within sixty (60) days clear the lot of debris and commence to rebuild and reconstruct the structure in conformity with the colors, materials, plans, and specifications of the original structure so destroyed, subject to any changes or modifications as may be approved by the Architectural Control Committee.
- (ii) In the case of partial damage or destruction, the owner shall, as promptly as an insurance adjustment may be made, cause the damage or destruction to be repaired and restored in a first class condition in accordance with the plans and specifications of the original structure and in conformity with its original exterior painting and decor. Any changes or alteration must be approved by the Architectural Control Committee. In no event shall any damage structure be left unrepaired and unrestored for in excess of sixty (60) days.

13. **VEHICLE PARKING.** Boats and boat trailers must be parked behind screen fencing. No boat or boat trailers may be parked on the street or in any open parking area.

Pickup campers, mini motor homes, and motor homes may be parked (but not stored) only on off-street parking areas provided they are of such size that all wheels rest on a paved parking area and the vehicle must have a current license, be in good condition and appearance, and be fully operable.

14. **ARCHITECTURAL CONTROL COMMITTEE.** As above stated, no building, fence, or wall shall be erected, placed, or altered on any lot until the construction plans and specifications and a plan showing the location of the structure have been approved by the Architectural Control Committee as to quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finish grade elevation. Approval shall be provided as hereinbelow set forth.

A. **Architectural Control Committee Membership.** The Architectural Control Committee is presently composed of Kenneth Carter, Alva Battle, and Ron Kilgo. A majority of the committee may designate a representative to act for it. In the event of 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 nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant.

The Architectural Control Committee of Kenneth Carter, Alva Battle, and Ron Kilgo shall serve until such time as Owner has conveyed by recorded deed all of the subject real estate. Upon the occurrence of said event, the then record owners of the majority of the lots within the said subdivision which have been committed and made subject to these covenants shall have the power through a duly recorded written instrument to change the membership or the committee from time to time but no more frequently than once in any twelve (12) month period.

B. Procedure. The committee's approval or disapproval as required in this Declaration shall be in writing. In the event the committee or its designated representative fails to approve or disapprove within thirty (30) days after plans and specifications have been submitted or in any event if no suit to enjoin construction has been commenced prior to the completion thereof, approval will not be required and the related covenants shall be deemed to have been fully complied with.

C. Standards. For the purpose of assuring the maintenance of the lots as a neighborhood of high standards, the Owner hereby adopts to following standards for architectural control:

The committee shall have the right to disapprove any plans submitted hereunder because of failure to comply with any restrictions contained herein, failure to include any information required herein; objections to exterior design, or such other matter which would render the proposed structure or use thereof inharmonious with the structure located upon other lots within the neighborhood.

15. EASEMENTS AND ENCROACHMENTS. The Owner proposes to construct on each of the aforesaid lots a town home. In the matter of the construction and completion of each of said town homes, certain eaves, roof overhangs, brick veneer, or other wooden siding or other building materials that may be attached to the structural walls will or may encroach over onto either the air space or the real estate of an adjoining or contiguous lot. There is hereby created on each of said lots so affected an easement for said encroachments or overhangs created by said construction. In addition to the easements for each of said encroachments or overhangs, there is also granted the right to maintain and repair the same so long as said encroachments and overhangs shall and go exist. In the further event that any structure comprising a said town home is totally destroyed and then rebuilt, the owners of said town home so affected agree that said encroachments and easements shall be permitted in the reconstruction and the right of maintenance shall continue to exist.

16. TERM. These covenants are to run with the land and shall be binding on all parties and all persons claiming under then for a period of twenty-five (25) years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then owners of the lots has been recorded agreeing to change said covenants in whole or in part.

17. ENFORCEMENT. Enforcement of the provisions of these covenants may be by the Architectural Control Committee or by the owner of any lot subject hereto by filing proceedings a law or in equity against any person or persons violating or attempting to violate same. Any party so enforcing these covenants shall be entitled to equitable relief, the recovery of damages resulting from any such violation, and a reasonable attorney's fee.

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

19. **AMENDMENT.** Anything contained herein to the contrary notwithstanding, the Owner reserves the sole and exclusive right to modify, release, or amend all the covenants and restrictions contained herein until such time as it has sold eighty-three and one-third percent (83 1/3%) of all lots or the expiration of three (3) years, whichever should first occur. After eighty-three and one third percent (83 1/3%) have been sold by the Owner, this Declaration may be modified and amended by the vote of at least sixty-six and two-thirds percent (66 2/3%) majority of lot owners, including the Owner herein, each lot to carry one (1) vote. Any such modification must be in writing and filed for record in the Office of the Judge of Probate of Shelby County, Alabama.

20. **NO REVERTER.** No restriction or provision herein is intended to be or shall be construed as a condition subsequent or as creating any possibility of a reverter.

21. **TEMPORARY CONSTRUCTION STRUCTURES.** Any provisions herein to the contrary notwithstanding, Owner shall have the right to construct, install, and maintain on any lot owned by Owner a sales and construction trailer or similar temporary sales and construction structure during the construction of improvements, which right shall continue until such time as Owner has closed the sale of all of the lots. Nothing in this instrument shall be interpreted to prevent Owner from displaying "for sale" signs and conducting such other activities on or about the lots owned by Owner as are reasonably necessary to promote and facilitate the sale of said lots by Owner and to enable Owner to complete the construction of dwellings and other permitted improvements upon said lots.

22. **PARTY WALLS.** The residential unit located on each lot is constructed up to at least one of the two side lines of the lot. The structural wall located on each such side line is a party wall and is also a part of the dwelling unit located on the adjoining lot. The title to each lot, therefore, shall be subject to all rights of the owner or owners of any such adjoining lot in and to any such party wall. The obligation and expense for maintenance and repair of each party wall shall be shared equally by the owners of the two lots on either side thereof; provided, any such expense for maintenance or repair which is the result of the negligence or willful act of the owner or owners of one of said lots shall be paid fully by the owner or owners of one of said lots shall be paid fully by the owner or owners guilty of such negligence or willful act. It shall be a violation of the covenants for any party to penetrate or create an opening through a party wall.

IN WITNESS WHEREOF, the undersigned Owners have hereto set their signatures and seal on this the 1st day of February, 1994.

Carter Homes and Development, Inc.
BY:

Kent Carter
Kenneth Carter, President

B & S Land Development, Inc.
BY:

Alva Battle
Alva Battle, President

STATE OF ALABAMA)

SHELBY COUNTY)

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I, the undersigned authority, a Notary Public, in and for said County, in said State, hereby certify that Kenneth Carter, President of Carter Homes and Development, Inc. and Alva Battle, President of B & S Development, Inc. is signed to the foregoing instrument, and who are known to me acknowledged before me on this day, that, being informed of the contents of the instrument, they, as such officers and with full authority, executed the same voluntarily for and as the act of said corporations.

Given under my hand and official seal this 25th day of February, 1994.

Brenda H. Clayton
NOTARY PUBLIC

My commission expires:

4/27/97

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