

STATE OF ALABAMA)
SHELBY COUNTY)

ASHLEY BROOK TOWNHOMES

DECLARATION OF PROTECTIVE COVENANTS, RESTRICTIONS, EASEMENTS, RIGHTS AND LIENS

This Declaration of Protective Covenants, Restrictions, Easements, Rights and Liens is made on this 29th day of April, 1997 by Highpoint Development, Inc. and Poe Properties, Inc., the owner of the property described below (hereinafter referred to as the "Declarant") which property is to be developed as a residential subdivision known as Ashley Brook Townhomes.

WITNESSETH

WHEREAS, The Declarant, 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"):

Ashley Brook Townhomes as recorded in Map Book 22, Page 78, in the Probate office of Shelby County, Alabama.

WHEREAS, the Declarant intends to develop the Real Estate and the Common Area (the Real Estate and 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 developments, protection, maintenance, improvement, and sale of the Property, the Declarant hereby declares that all of the Property shall be subject to the following covenants, restrictions, easements, rights, equitable servitudes, liens and charges:

ARTICLE I

DEFINITIONS

1. ASSOCIATION shall mean and refer to HOMEOWNER'S ASSOCIATION, INC., its successors and assigns.

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2. OWNER shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

3. PROPERTY shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

4. COMMON AREA shall mean all real property (including improvements, sign easements, storm water drainage easements and utility easements) to be owned by the Association for the common use and enjoyment of the owners. The Common Area to be owned by the Association at the time of the conveyance of the last lot is the area designated as Common Area on the recorded plat map.

The maintenance of the common area shall be sole responsibility of the homeowner's association.

5. LOT shall mean and refer to any plot of land together with any improvements thereon as shown upon any recorded Map of the Property with the exception of the Common Area.

6. DECLARANT shall mean and refer to Highpoint Development, Inc. and its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

7. MAINTENANCE shall mean the exercise of reasonable care to keep lots and the common area, including, buildings, roads, easements of ingress and egress, drainage easements, sign easements, utility easements, parks, landscaping, lighting and other related improvements and fixtures in a condition comparable to their original condition. All roads and drainage structures shall be constructed and maintained according to the various regulations of Helena, Alabama.

ARTICLE II

PROPERTY RIGHTS

1. Title to Common Areas. Declarant shall retain the legal title to the Common Area so long as it owns at least one lot subject to these covenants. On or before conveyance by Declarant of the last lot which Declarant owns in Ashley Brook, Declarant shall convey the Common Areas to the Association subject to the taxes for the year of conveyance and to restrictions, conditions, limitations reservations and easements of record. Declarant expressly reserves the right to create additional non-exclusive common utility easements, easements of drainage, water retention easements, sanitary sewer easements, and ingress and egress easements in the common area as described above until such time as it conveys the common area to the Association, regardless of whether Declarant has conveyed any of the lots within to individual owners.

2. **OWNER'S EASEMENTS OF ENJOYMENT.** Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

A. All provisions of this Declaration, any Plat of all or any part of the property, and the Articles and By-Laws of the Association;

B. Rules and Regulations adopted by the Association governing the use and enjoyment of the Common Areas;

C. Restrictions contained on any and all Plats of all or any part of the Common Area or filed separately with respect to all or any part or parts of the property;

D. The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members; No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by 2/3 of members has been recorded and accepted by the public agency, authority, or utility.

E. Easements for installation and maintenance of utilities, drainage facilities and sign easements as shown on the recorded plat of the property as shown in Map Book 22 Page 78 in the Office of the Judge of Probate of Shelby County, Alabama, and any amendments thereto concerning the various types of easements which have been reserved by the Declarant.

3. **DELEGATION OF USE.** Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

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

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

1. Every owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

2. The Association shall have one class of voting membership:

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

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

1. **CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS.** The Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

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

3. **MAXIMUM ANNUAL ASSESSMENT.** Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be One Hundred dollars (\$100.00) per Lot.

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

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

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

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

each class of members who are voting in person or by proxy at a meeting duly called for this propose.

5. **NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTION 3**

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

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

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

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

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

10. **APPORTIONMENT OF MAINTENANCE EXPENSES BETWEEN DECLARANT AND HOMEOWNER'S ASSOCIATION.** Declarant and Homeowner's Association shall split the maintenance expenses of the common area for each calendar year based on the total number

of lots owned by member of the homeowner's association and the total number of the lots owned by Declarant as of December 31 of each year. Declarant shall have the sole responsibility of contracting for maintenance services for the common areas for any year in which it owns at least one lot in the development.

Example: Declarant contracts with ABC Maintenance Service to maintain the common area beginning March 1, 1997. On December 31, 1997, Declarant has sold sixty (60) townhouse lots in inventory. Declarant would be entitled to receive from the Homeowner's Association 50% of the total maintenance cost for the calendar year 1997.

ARTICLE V

ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the property, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Declarant acting as the Architectural Committee until such time as the common areas are conveyed by an instrument to the Association. Thereafter, the Architectural Committee shall be composed of three (3) or more representatives appointed by the Board of Directors of the Association. In the event said Architectural Committee fails to approved or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

All required plans must be submitted C/O Highpoint Development/Poe Properties 1825 D 12th Avenue Bessemer, Alabama 35020, until such time as the Association has been formed and representatives appointed.

Neither the Architectural Committee, nor any architect or agent thereof nor the Declarant shall be responsible to check for any defects in any plans or 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.

Neither the Architectural Committee nor any member or the Declarant shall be liable to any owner or to any other party for any damage, loss or prejudice suffered on account of the approval or disapproval of any plans, drawings or specifications, whether or not defective, or the execution of filing of any action, motion, certificate, petition or protest in the courts of the United States, or the State of Alabama, or with any other governmental board or body, whether or not the facts stated therein are true and correct.

ARTICLE VI

EXTERIOR MAINTENANCE

In the event an owner of any Lot in the property shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Board of Directors of the

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

ARTICLE VII

USE RESTRICTIONS

1. **Land Use.** The Real Estate shall be used exclusively for residential purposes. No building shall be constructed, place 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 nonresidential purpose, except, the Declarant 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 Declarant continues to own any portion of the Property.

2. **Parking.** No automobile, truck, house trailer, camper, boat, 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 of the property owners, their families or invitees may be kept or stored on the property. No house trailer, dune buggy's, or inoperable vehicles may be kept or stored on the premises. Campers and boats may be stored on the premises but must not be seen from the street. 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 designate parking area 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 reasonable possible, together with the right of ingress and egress in and upon said parking areas.

3. **Dwelling Size.** Every dwelling must contain not fewer than 1000 square feet of heated space.

4. **Set-back Requirements.** Dwelling 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. Declarant reserves the right to grant waivers for setback violations on the recorded plat.

5. **Nuisances.** No noxious or offensive activity, or activity which is, or may become, and 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.

6. **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

temporarily structures of offices erected by the Declarant 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.

7. **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 Declarant 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. There shall be no satellite dishes allowed.

8. **Oil and Mining Operations.** No exploration, drilling, development or refining of or for hydrocarbons, or quarrying or mining operation 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.

9. **Animals.** No animals, livestock or poultry of any kind shall be raised, bred or kept upon the Property, except the 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.

10. **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.

11. **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 reserve, 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 encroachments 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 reasonable 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, other 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 record map.

12. **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 rights, 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 Declarant, 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 majority of then owners of not less than three-fourths of the Lots, shall be recorded in the Probate Office of Shelby County, Alabama.

13. **Application to Owner.** Notwithstanding any provisions herein to the contrary, nothing contained in this instrument shall prevent, hinder or limit the Declarant 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 Declarant.

14. **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 of 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.

15. **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 residence 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.

16. The undersigned owner reserved 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.

17. Invalidity 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.

18. **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 an proceedings a law in

equity against the person, or person, 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.

19. **Covenant with Respect to Maintenance of Lots 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 the appropriate external care) of the structure all in a manner and with such frequency as 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 of 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 houses 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.

20. **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 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 damaged structure be left unrepaired and unrestored for in excess of sixty (60) days.

ARTICLE VIII

PARTY WALLS

1. **GENERAL RULES OF LAW TO APPLY.** Each wall which is built as part of the original construction of the homes upon the Property and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence of willful acts or omission shall apply thereto.

2. **SHARING OF REPAIR AND MAINTENANCE.** The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

3. **DESTRUCTION BY FIRE OR OTHER CASUALTY.** If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the

other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

4. **WEATHERPROOFING.** Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against the elements.

5. **RIGHT TO CONTRIBUTION RUNS WITH THE LAND.** The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

6. **ARBITRATION.** In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

ARTICLE IX

GENERAL PROVISIONS

1. **ENFORCEMENT.** The Declarant, the Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provision of this Declaration. Failure by the Declarant, the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

2. **SEVERABILITY.** Invalidity of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

3. **AMENDMENT.** The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date of this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded.

4. **SCRIVENER'S ERROR.** Notwithstanding provisions elsewhere herein for amendments, any scrivener's error or omission may be corrected by the filing of any amendment to this Declaration by the Declarant until the time of conveyance of the common areas to the Association without the express consent of the owner of any lot affected.

IN WITNESS WHEREOF, the undersigned Highpoint Development, Inc. and Poe Properties, Inc., has hereunto set its hand and seal on this 29th day of April, 1997.

Highpoint Development, Inc.

Joel W. Mulkin
by: Joel W. Mulkin, President

Poe Properties, Inc.

Frank Poe
by: Frank Poe, President

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SHELBY COUNTY JUDGE OF PROBATE
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STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Joel W. Mulkin, whose name as President of Highpoint Development, Inc. is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day, that, being informed of the contents of the conveyance, he, in his capacity as such President and with full authority, executed the same voluntarily for and as the act of said Incorporation.

Given under my hand and seal this 29th day of April, 1997.

Dorita Carmichael
Notary Public

MY COMMISSION EXPIRES AUGUST 5, 2000

My commission expires: _____

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Frank Poe, whose name as President of Poe Properties, Inc. is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day, that, being informed of the contents of the conveyance, he, in his capacity as such President and with full authority, executed the same voluntarily for and as the act of said Incorporation.

Given under my hand and seal this 29th day of April, 1997.

Betty W. Scroggins
Notary Public

My commission expires: NOTARY PUBLIC STATE OF ALABAMA AT LARGE.
MY COMMISSION EXPIRES: Nov. 28, 1999.
BONDED THRU NOTARY PUBLIC UNDERWRITERS.