

STATE OF ALABAMA )  
COUNTY OF SHELBY )

Final Draft  
6/4/98

DECLARATION OF RESTRICTIVE COVENANTS FOR  
ASHTON WOODS PHASE I

KNOW ALL MEN BY THESE PRESENTS: That:

WHEREAS, L. Douglas Joseph, a married man ("the Developer") has heretofore acquired fee simple title to certain real property situated in Shelby County, Alabama and has subdivided such property (the Subdivision) into twenty six (26) Lots (herein "Lots") as described in map and survey of ASHTON WOODS PHASE I, as recorded in Map Book 23, Page 160, in the Probate Office at Shelby County, Alabama (herein the "Record Map" or the "Property"). The Property is not the homestead of the Developer or his spouse.

WHEREAS, the Developer desires to develop a single family residential estate subdivision to be known as ASHTON WOODS PHASE I and in doing so to subject the Property to the restrictions and covenants set forth in this Declaration of Restrictive Covenants for ASHTON WOODS PHASE I (herein "the Declaration") and

NOW THEREFORE, the Developer does, upon recording hereof, declare and make the Property and each of the Lots now or hereafter included in the Subdivision of the Property subject to the covenants, conditions, restrictions, uses, easements, limitations and affirmative obligations set forth in this Declaration and as shown on the Record Map, all of which are declared to be in furtherance of a plan for the improvement of the Property in a desirable and uniform manner, and all of which shall run with the land and shall be binding on all persons, firms or corporations having or acquiring any right, title or interest in the Property, the Lots, or any part(s) thereof, and shall be for the benefit of each such Owner of Property or

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interest therein, and shall inure to the benefit of and be binding upon each successor in interest to the Owners thereof.

## **ARTICLE I**

### **Land Use**

The Property will be used for residential purposes only and not for any business or trade. Home offices are allowed, however, such allowance is intended only to allow individual work at a structure located on a Lot, but not the conduct of business with the presence of the general public at the Property.

## **ARTICLE II**

### **Building Requirements**

(a) **MINIMUM STRUCTURE SIZE OF PRIMARY DWELLING.** No Lot shall contain more than one Primary Dwelling and no Primary Dwelling shall be erected on any Lot if such dwelling contains less than 1400 square feet of living space, for a single story dwelling or split foyer, and not less than 1600 square feet of living space for a 1½ story or 2 story dwelling. Living Space is defined as heated and finished areas and does not include porches, garages, basements, carports or attics. .

(b) **EXTERIOR MATERIAL.** No Primary Dwelling shall use the following materials which shall be visible on the exterior of any such building: (a) concrete block; or (b) stucco over concrete block.

(c) **DRIVEWAYS.** All driveways servicing any Lot shall be concrete or asphalt.

(d) **BUILDING LOCATION.** No Primary Dwelling shall be located any closer than 30 feet from any front or rear Lot line nor shall any Primary Dwelling be located any closer than 10 feet from any side Lot line. For the purpose of this paragraph (d), eaves and steps shall not be construed as part of the building.

(e) **FENCING.** Fencing shall only be allowed on the rear of a Lot

and shall not extend any further toward the front of the Primary Dwelling than the rear line of the Primary Dwelling. The ARC shall have the right to approve any proposed fencing.

(f) **TEMPORARY STRUCTURES AND OUTBUILDINGS.** No mobile homes or temporary dwellings shall be built and used for residential purposes.

(g) **DESIGN CRITERIA.** The objective of the Architectural Review Committee hereinafter established is to provide for the quality development of all of the Lots within the subdivision.

(h). **SEPTIC TANKS.** All septic tanks must be of an improved type, such tanks together with adequate field lines must be approved and completely acceptable to the Shelby County Health Department. No septic tank or field line shall be constructed within 20 feet of an adjoining Property line. No sewer or drainage lines shall be constructed or laid which shall empty on or become a nuisance to an adjoining Lot, Property Line or Road.

(i) **THE ROOF.** Pitch on any Primary Dwelling shall not be less than 6 and 12 unless first approved in writing by the Architectural Review Committee.

(j) **ALL** Primary Dwellings will have brick, stone or dryvit type product on all four sides of the foundation, no exposed block. All Primary Dwellings are to be of traditional styling and approved in writing by the Architectural Review Committee.

(k) **NO CANTILEVERED CHIMNEY SHALL BE ALLOWED ON THE FRONT OR SIDES OF ANY STRUCTURE.** All chimney chases on the front and side shall be supported by the foundation of the structure and shall be constructed of the same material as used in the foundation. Cantilevered chimney chases may be allowed on the rear by specific approval of the Architectural Review Committee. Bay windows on the front or side of the dwelling must have a bottom return.

(l) **GARAGES.** Garage doors shall only be permitted on the front

of Primary Dwellings if the interior of the garage is sheetrocked and painted.

(m) **CONSTRUCTION OF IMPROVEMENTS.** When the construction of any building is once begun, work thereon must be prosecuted diligently and continuously and must be completed within 12 months.

(n) **ALL** roof vents and pipes shall be painted as near the color of the roof as possible.

(o) **OUTBUILDINGS.** No outbuildings, storage sheds, separate garages or detached buildings of any kind shall be allowed.

(p) **POOLS.** Swimming pools shall be only be allowed if approved by the Architectural Review Committee.

(q) **OBSTRUCTION OF VIEW AT INTERSECTIONS.** No tree, fence, wall, hedge, shrub or planting which obstructs lines of view at elevations between two (2) and six (6) feet above the Roadways shall be placed or permitted to remain on any corner Lot. Trees shall be permitted to remain provided the foliage line is kept trimmed so as to prevent obstruction of such lines of sight.

(r) **GRASSING OF YARDS.** All front yards are to be sodded. Seeding or sprigging, or a combination, will be permitted on the sides and rear of houses.

(s) **LOCATION OF AIR CONDITIONING UNITS AND VENTS.** Outside air conditioning units and plumbing and heating vents shall be placed only at the rear or at the sides of houses.

(t) **DOORS AND WINDOW FINISHES.** No silver finish metal doors or windows of any kind will be permitted. However, factory painted or anodized finish in natural earth tones maybe used.

### **ARTICLE III**

#### **ARCHITECTURAL REVIEW COMMITTEE**

(a) **APPROVAL OF ARCHITECTURAL REVIEW COMMITTEE.** No structure, building, or fence shall be commenced, erected, placed, moved onto or permitted to remain on any Lot, nor shall any existing



structured upon any Lot within the Property be altered in any way which materially changes the exterior appearance thereof until same is submitted to and approved by the Architectural Review Committee (herein "the ARC"). The ARC will be provided with such plans and specifications which will be in a form and shall contain such information, as may be required by the Architectural Review Committee and shall include but no necessarily be limited to:

1. a site plan of the Lot showing the location, height, and exterior design (including a summary of all proposed materials together with samples of exterior materials and paint colors) of all buildings and improvements proposed to be constructed on the Lot; paint colors preferable should be earth tone. Bright colors are discouraged and will be denied;

2. A grading, and drainage plan for the Lot; and

3. Any remodeling, reconstruction, alterations or additions to an existing residence shall require the written approval of the Architectural Review Committee.

(b) **COMPOSITION OF THE COMMITTEE.** The Architectural Review Committee (the "Committee"), until termination or modified pursuant to Article III, Paragraph (j) as hereinafter set out shall be composed of the Developer, Tracie Pierce and Kathy Joseph until such time as the Developer has sold all of the Lots within the Property. The Developer may elect to substitute himself with two (2) Lot Owners prior to selling all the Lots. At such time as the Developer has sold all of the Lots, the Committee shall be comprised of three (3) individuals who are Lot Owners who are elected by a majority of the fee simple Owners of the Lots within the Property and at such time, the affirmative vote of a majority of the members of the Committee shall be required in order to issue any permit and authorization set forth herein.

(c) **EVIDENCE OF APPROVAL.** The approval of the ARC shall be evidenced by written permit executed by one or more of the members of the ARC and counter-signed by the applicant therefor. The written permit shall be executed in duplicate with one copy to be retained by the applicant.

(d) **BASIS FOR DISAPPROVAL OF PLANS:**

1. The scope of review by the Committee shall be limited to appearance and improvement location only. The purpose of the Committee is to promote quality development on the Lots and not necessarily to impose requirements concerning the type of structure or the design of such structures in such Lots. **THE ARC DOES NOT ASSUME OR ACCEPT BY THE FILING HEREOF ANY RESPONSIBILITY OR AUTHORITY TO REVIEW FOR STRUCTURAL SOUNDNESS, COMPLIANCE WITH BUILDING OR ZONING CODES OR STANDARDS, OR ANY OTHER FACTORS.**

2. The ARC Committee shall have the right to disapprove any plans and specifications submitted for approval for any of the following reasons:

- (A) failure of such plans and specifications to comply with the covenants and restrictions herein set forth;
- (B) failure to include information in such plans and specifications as may have been reasonably requested by the ARC;
- (C) reasonable objection to the exterior design, appearance or materials proposed to be used in any proposed structure;
- (D) incompatibility of use of any proposed structure or improvement with existing structures or uses upon other Lots in the Property;
- (E) objection to the site plan, clearing plan, drainage plan for any special parcel;
- (F) failure of plans to take into consideration the particular topography, vegetative characteristics, and natural environs of the Lot; and
- (G) any other matter which, in the judgment of the Committee, would render the proposed structure, improvement, or uses inharmonious with the general plan of improvement of the Property or with

structures, improvements, or uses located upon Lots in the Property.

3. In any case where the ARC shall disapprove any plans and specifications submitted hereunder, or shall approve the same only as modified or upon specified conditions, the disapproval shall be accompanied by a statement of the grounds upon which such actions were based. If no response is made by the ARC within a thirty (30) day period after submission of such plans and specifications, it shall be deemed that such plans and specifications are approved. In any such case the ARC 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.

(e) **RETENTION OF COPY OF PLANS.** Upon approval by the ARC of any plans and specifications, as approved, shall be deposited for permanent record with the ARC, and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same.

(f) **FAILURE TO OBTAIN APPROVAL.** If any structure or improvement shall be altered, erected, placed or maintained upon any Lot, or any new structure or improvement commenced on any Lot other than in accordance with plans and specifications approved by the ARC pursuant to the provisions of this Article III, such alteration, erection, maintenance or use shall be deemed to have been undertaken in violation of this covenant, and without the approval required herein, upon written notice from the ARC, any such structure or improvement as altered, erected, placed or maintained shall be corrected as to extinguish such violation. If fifteen (15) days after the notice of such violation the Owner of the Lot upon which such violation exists shall not have taken reasonable steps toward the removal or correction of the same, the Committee shall have the right, through its agents and employees, to enter upon such Lot and to take such steps as may



be necessary to extinguish the 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 Lot in question. The lien provided in this paragraph shall not be valid as against a bona fide purchaser (or bona fide mortgage) of the Lot 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 mortgage) conveying the Lot in question to such purchaser (or subjecting the same to such mortgage).

(g) **CERTIFICATE OF COMPLIANCE.** Upon completion of the construction or alteration of any structure or improvement in accordance with the plans and specifications approved by the ARC, the ARC shall, upon written request of the Owner thereof, issue a certificate of compliance in form suitable for recordation, identifying such structure or improvement is placed, and stating that the plans and specifications, the location of such structure or improvement and the use or uses to be conducted thereon have been approved and that such structure or improvement complies with the requirements of the ARC. 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 Article III, Paragraph (g), shall be prima facie evidence of the facts therein stated, and as to any purchaser or encumbrance in good faith and for value, or as to any title insurer, such certificate shall be conclusive evidence that all structures or improvements on the Lot and the use or uses described therein comply with all the requirements of this Article III, and with all other requirements of this Article III, and with all other requirements of the Declaration as to which the Committee exercises any discretionary or interpretive powers.

(h) **INSPECTION RIGHTS.** Any agent of the Developer or the ARC



may at any reasonable time or times enter upon and inspect any Lot or any improvements thereon for the purpose of ascertaining whether the maintenance of such Lot and the maintenance, construction, or alteration of structures and improvements thereon are in compliance with the provisions hereof; and neither the Developer nor the ARC nor any such agent shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

(i) **WAIVER OF LIABILITY.** Neither the ARC nor any architect nor agent thereof, nor Owner, nor any partner, agent, or employee of any of the foregoing, shall be responsible in any way for (i) any failure of structures or improvements to comply with requirements of this Declaration, although a certificate of compliance has been issued; (ii) any defect in any plans and specifications submitted, revised, or approved in accordance with the foregoing provisions; or (iii) 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 9 for any cause arising out of the matters referred to in this Section 9 and further agree to and do hereby release said entities and persons for any and every such cause.

(j) **DURATION.**

1. The rights of the Developer as to the Architectural Review Committee shall terminate upon the earlier of:

(A) the date that the Developer has sold the last Lot he owns within the Subdivision and Property; or

(B) the resignation or inability of Tracie Pierce, Kathy Joseph and the Developer to perform on the ARC.

2. After the Developer's involvement with the ARC has ended, the Committee shall be comprised of at least three (3)

people who are fee simple Lot owners and are designated by a majority vote of the fee simple Lot Owners.

3. Inactivity of the ARC shall not be deemed a waiver of the rights of the ARC.

#### ARTICLE IV

##### Miscellaneous

(a) **ANIMALS.** No dog kennels for commercial purposes will be allowed. No cows, swine or chickens will be allowed, and no commercial breeding of any animal will be allowed. Only domestic animals (i.e. cats, dogs, etc.) shall be allowed. No dogs shall be allowed to run free.

(b) No obnoxious 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 Property, the other Lots or Lot Owners. Without limiting the generality of the foregoing, it is the intent of the Developer and these covenants to restrict the use of the Property and any Lot therein which will detract from a high quality single family residential subdivision. No boat, trailer, recreational or commercial vehicle or bus or vehicle of any kind which is not in driveable condition, shall be allowed to be parked or stored on any Lot in a location where it can be seen from a front or side street. No Lot shall be used as a dumping ground for rubbish, trash, garbage or other waste and such shall not be kept except in sanitary containers. Each Lot shall be maintained in a neat and orderly fashion at least to the extent of visibility from the Roads, which includes the yard and any shrub beds. No large satellite, microwave dishes or television or radio antennas shall be placed on any Lot unless approved in writing by the ARC, but in no event shall large satellite, microwave dishes or televisions or radio antennas be visible from the Roads. No Lot shall be cultivated for crops of

any sort, except for gardens of reasonable size, which is to be located in the rear of the Primary Dwelling.

(c) **No** signs of any kind shall be displayed to the public view on any Lot except one sign of not more than five (5) square feet advertising the Property for sale or rent, or signs used by a builder to advertise the Property during construction and sale period.

(d) **During** all construction, all vehicles, including those delivering supplies, must enter the building Lot on the driveway only as approved by the ARC so as not to unnecessarily damage trees, and Roads. Any damage not repaired by the contractor will be repaired by the ARC (after ten (10) days written notice) and will be charged to the Lot Owner at a reasonable charge for such services, which charge shall constitute a lien upon such Lot enforceable by appropriate proceedings at law or equity. During construction, all Builders must keep the homes, garages, and building site clean. All building debris, stumps, trees, etc., must be removed from each building Lot by the Builder as often as necessary to keep the house and Lot attractive. Such debris will not be dumped in any area of the Property. Best management practices shall be implemented and observed during all construction on any Lot.

(e) **No** Lot shall be sold or used for the purpose of extending any public or private road, street, or alley, for the purpose of opening any road, street, or alley, except by the prior written consent of the ARC.

(f) **All** mailboxes shall be of a standard design and type as determined by the ARC.

(g) **No** Lot in the Subdivision may be subdivided or replatted without the express written consent and approval of all of the Lot Owners and the appropriate government agency.

(h) **GRANTEE'S ACCEPTANCE.** The grantee of any Lot 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 purpose thereof, whether from Owner or a subsequent Owner of such Lot, shall accept such deed or other contract upon and subject to each and all of these restrictions herein contained and other easements, restrictions and reservations of record.

(i) **INDEMNITY FOR DAMAGES.** Each and every Lot Owner and future Lot Owner, in accepting a deed or contract for any Lot subject to the Declaration, agrees to indemnify the Developer for any reasonable direct damage (but not consequential damages) caused by such Owner, or the contract, agent, or employees of such Owner, to the Roads.

(j) **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 of and from every other one of the provisions and restrictions and of and from every combination of the provisions and restrictions.

(k) **EFFECTS OF VIOLATION ON MORTGAGE LIEN.** No violation of any of this Declaration shall defeat or render invalid the lien of any mortgage made in good faith and for value upon any portion of the Property, and Lot therein; provided, however, that any mortgagee in actual possession, or any purchaser at any foreclosure sale shall be bound by and subject to this Declaration as fully as any other Owner of any portion of the Property, any Lot therein.

(l) **NO REVERTER.** No restriction herein is intended to be, or shall be construed as a condition subsequent or as creating a possibility of reverter.

(m) **DURATION AND AMENDMENT.** The restrictions contained in this Declaration shall run with and bind the Property and, shall inure to the benefit of and shall be enforceable by the Developer, the

ARC, and the Owner of any Lot included in the Property, their respective legal representatives, heirs, successors and assigns until the 31<sup>st</sup> day of December, 2015, after which time said restrictions shall be automatically extended for successive periods for ten (10) years. The termination aspects set forth herein do not apply to the Lake or the maintenance thereof. This Declaration may not be amended in any respect except by the execution of an instrument shall be signed by 2/3 of the Lot 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 appropriated at the time of the execution of such instrument. After December 31, 2015, this Declaration may be amended and or terminated in its entirety by an instrument signed by not less than a majority of the Lot Owners, which instrument shall be filed for recording among the Land Records of Shelby County, Alabama, or in such other places of recording as may be appropriate at the time of the execution of such instrument.

(n) **ENFORCEMENT.** In the event of a violation or breach of any of these restrictions or any amendments thereto by any Owner of a Lot, or employee, agent, or lessee of such Owner, the Owner(s) of Lot(s), Developer, their successors and assigns, or any party to whose benefit these restrictions inure shall have the right to proceed at law or in equity to compel compliance with the terms and conditions hereof, to prevent the violation or breach of said restrictions, to sue for and recover damages for any amounts required to be paid hereunder, or take all such courses of action at the same time, or such legal remedy deemed appropriate. No delay or failure on the part of an aggrieved party to initiate and available remedy set forth herein shall be held to be a waiver of that party or of any other party to assert any right available to him upon the recurrence of continuation of said

violation or the occurrence of different violations. Damages shall not be deemed adequate compensation for any breach or violation of any provision hereof, but any person or entity entitled to enforce any provision hereof shall be entitled specifically to relief by way of injunction as well as any other available relief either at law or in equity. Any party to proceeding who succeeds in enforcing a restriction or enjoining the violation of a restriction against a Lot Owner shall be awarded as reasonable attorney's fee against such Lot Owner, and shall have the right to place recorded lien on any Lot for purpose of securing the payment of any amounts owing by a Lot Owner under this Declaration and such lien may be enforced in the same manner as foreclosure of a mortgage under the law of the State of Alabama.

(o) **NO WAIVER.** The failure of any party entitled to enforce any of these restrictions herein contained shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to such violation or breach occurring prior or subsequent thereto; provided, however, that approval of plans pursuant to Article III shall be binding on any and all parties as a conclusive determination that such plans are in conformity with these restrictions.

(p) **All** Lot owners shall maintain their Lot and the improvements thereon in a neat and orderly fashion.

(q) **MODIFICATION OF THESE COVENANTS BY DEVELOPER.**

Notwithstanding anything to the contrary contained herein, the Developer reserves the right to unilaterally modify these covenants with respect to any Lot owned by Developer at any time without the necessity of obtaining approval from any Lot Owner or Lot Mortgagee. Any such modification shall only apply to Developer Owned Lot(s).

(r) **PROPERTY SOLD AS IS WHERE IS.** By accepting a Deed or



Mortgage to a Lot, such Lot Owner and/or Mortgagee acknowledges that the Developer has no further responsibility with respect to the Property or the Roadways or improvements located thereon, it being expressly understood that all Lots and any improvements including the Roads are sold AS IS/WHERE IS. Notwithstanding the foregoing, it shall be the responsibility of the Developer to seal with asphalt ASHTON WOODS DRIVE, WOODLAND CIRCLE and WOODCREST CIRCLE. As used in these covenants, the words "Road" or "Roads" means ASHTON WOODS DRIVE, WOODLAND CIRCLE and WOODCREST CIRCLE.

(s) **ARBITRATION.** Any controversy or claim between a Lot Owner and the Developer, which may properly be submitted to arbitration, shall be settled under common law arbitration by arbitration in accordance with the rules of the American Arbitration Association, and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Each party to such claim or controversy shall appoint one person as an arbitrator to hear and determine the dispute and if they shall be unable to agree, then the two arbitrator whose decision shall be final and conclusive upon the parties hereto. The expenses of such arbitration shall be borne by the losing party or in such proportion as the arbitrators shall decide. The successful party shall recover as expenses and costs all reasonable attorney's fees incurred by him in connection with the arbitration proceeding or any appeals therefrom. In the event any such controversy or claim is not properly submissible to arbitration, the Lot Owner having such claim or controversy with the Developer, irrevocably waives all right to trial by jury in any court in any such action.

(t) **NOTICES.** Any notice to be given under these covenants shall be in writing and be sent by certified mail, return receipt requested and shall be effective if given to the Lot Owner to

whom such notice is directed at either; 1. The address provided by such Lot Owner to the other; or 2. At the address maintained by the Tax Collector of Shelby County, Alabama for such Lot Owner (herein the "Authorized Address"). Mailing, postage prepaid, by certified mail, to the Authorized Address shall conclusively mean receipt by the Lot Owner to whom such notice is intended. In the event such notice is for repair or maintenance on a Road or for the Lake, the failure of any Lot Owner to respond to any such notice within thirty (30) days of the date of such notice shall be conclusively deemed an Affirmative Vote by such non responding Lot Owner to the proposed maintenance or repairs.

(U) **ENTRANCE MONUMENT.** The Entrance Monument located on the Right-of-Way of ASHTON WOODS DRIVE, being on the Westerly corner of Lot one (1) and at the intersection of Shelby County Road 39 shall be maintained by the Developer until all of the Lots withing the Subdivision have been sold. Thereafter, the Entrance Monument shall be maintained by the Lot Owners.

IN WITNESS WHEREOF, the undersigned, as the Developer of the Property, has caused this Declaration to be executed as of the 9<sup>th</sup> day of JUNE, 1998.

  
L. Douglas Joseph

STATE OF ALABAMA )

SHELBY COUNTY )

I, the undersigned, a Notary Public in and for said County

in said State, hereby certify that L. Douglas Joseph, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day, that being informed of the contents of the foregoing instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and seal this 9 day of JUNE, 1998.

Robert Andrew Shipman  
Notary Public

My Commission Expires: 2/7/2000

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