

Inst # 2001-20649

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SHELBY COUNTY JUDGE OF PROBATE
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RESOLUTION 01-05-14-10

BE IT RESOLVED, by the Shelby County Commission that the Declaration of Covenants, Conditions, and Restrictions for the north and south parts of Shelby West Corporate Park are amended to incorporate Height Hazard Covenants.

RESOLVED, the County Manager is hereby directed to proceed as the Declarant and is responsible for facilitating any and all necessary actions associated with these covenants.

Shelby West Corporate Park

Declaration of Covenants, Conditions and Restrictions

Recorded in the Official Records of Shelby County, Alabama

This Declaration, made this 14th day of May, 2001, by the Shelby County Commission is made with reference to the following facts:

RECITALS

(a) The Shelby County Commission is the owner of that certain real property in Shelby County, Alabama described in Exhibit "A" attached hereto and by this reference incorporated herein, and known as Shelby West Corporate Park.

(b) Shelby West Corporate Park is being developed as a planned industrial park. It is the desire and intention of the Shelby County Commission to subject the real property in said industrial park to certain covenants, conditions and restrictions for the benefit of the property, the Shelby County Commission and the purchasers of lots in Shelby West Corporate Park. It is intended that said covenants, conditions and restrictions bind and benefit not only said purchasers and the Shelby County Commission but also their respective successors, heirs and assigns, and that all lots in Shelby West Corporate Park should be held, used, leased, sold and conveyed subject to the covenants, conditions and restrictions set forth in this declaration.

(c) It is the intention of the Shelby County Commission to further a plan of subdivision by means of the covenants, conditions and restrictions set forth in this Declaration. Said covenants, conditions and restrictions are intended to be common to all of the lots in Shelby West Corporate Park and to enhance and protect the value, desirability and attractiveness of all such lots to their mutual benefit.

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Section 1. Definitions

Unless the context otherwise specifies or requires, the terms defined in this Section 1 shall, as used in this Declaration, have the meanings herein set forth.

Architect. A person holding a certificate to practice architecture in the State of Alabama.

Beneficiary. A mortgagee under a mortgage as well as a beneficiary under a deed of trust.

Declarant. The Shelby County Commission, and, to the extent provided in Section 10 of this Declaration, its successors and assigns.

Declaration. This Declaration of covenants, conditions and restrictions as it may from time to time be amended or supplemented.

Deed of trust. A mortgage as well as a deed of trust.

Improvement/Improvements. Buildings, outbuildings, roads, driveways, parking areas, fences, screening walls and barriers, retaining walls, stairs, decks, water lines, sewers, electrical and gas distribution facilities, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, loading areas, and all other structures, construction, installation, and landscaping of every type and kind, whether above or below the land surface.

Lot. A fractional part of the subject property as subdivided on subdivision or parcel maps recorded from time to time in the Office of the Probate Judge of Shelby County, Alabama.

Master Plan. The Shelby West Corporate Park Master Plan.

Mortgage. A deed of trust as well as a mortgage.

Mortgagee. A beneficiary under, or holder of, a deed of trust, as well as a mortgagee under a mortgage.

Occupant. A lessee or a licensee of an owner, or any other person or entity other than an owner in lawful possession of a lot with the permission of the owner.

Owner. The person or persons holding record fee title to any portion of the property, or, the lessee or lessees entitled to occupy all of a parcel under a lease for a fixed term of thirty years or longer (in which case the fee owner of the parcel demised by such lease shall not be deemed to be the owner of such parcel for purposes of this declaration during the term of said lease). In the event that the ownership of the improvements on any parcel shall ever be severed from the ownership of the land, whether by lease or by deed, only the owner of the improvements shall be deemed an owner hereunder and shall be entitled to act on behalf of the owner of the land for all purposes hereunder.

Record/recorded/recordation. With respect to any document, the recordation of said document in the Office of the Probate Judge of Shelby County, Alabama.

Sign. Any structure, device or contrivance, electric or non-electric, upon or within which any poster, bill, bulletin, printing, lettering, painting, device or other advertising of any kind whatsoever is used, placed, posted, tacked, nailed, pasted or otherwise fastened or affixed.

Street or streets. Any street, highway, road or thoroughfare within or adjacent to the subject property and shown on any recorded subdivision or parcel map, or record or survey, whether designated thereon as street, boulevard, place, drive, road, court, terrace, way, lane, circle, or otherwise.

Subject property. Shelby West Corporate Park and each lot therein and all of the real property now or hereafter made subject to this declaration.

Visible from neighboring property. With respect to any given object on a lot, that such object is or would be visible to a person six (6) feet tall, standing on any part of any adjacent lot or other property at an elevation no greater than the elevation of the base of the object being viewed.

Property line. The boundary of every lot.

Net acreage. The total number of square feet of land of the subject property, less any square feet of land included in dedicated streets, roadways, parks, or natural open space.

Section 2. Subject Property

(a) *General declaration.* Declarant hereby declares that all of that real property located in Shelby County, Alabama, and more particularly described in Exhibit "A" is, and shall be, conveyed, hypothecated, encumbered, leased, occupied, built upon, or otherwise used, improved or transferred in whole or in part, subject to this declaration. All of the covenants, conditions and restrictions set forth herein are declared and agreed to be in furtherance of a master plan for the subdivision, improvement and sale of said real property and are established for the purpose of enhancing and protecting the subject property and every part thereof. All of said covenants, conditions and restrictions shall run with all of the subject property for all purposes and shall be binding upon and inure to the benefit of Declarant and all owners, occupants and their successors in interest as set forth in this declaration.

Section 3. Regulation of Operations and Uses

(a) *Permitted uses.* The development of the subject property is planned in phases. The land in each phase shall be divided into Areas C, L/O, AR and A which shall be established by declarant at the time the final subdivision map for each phase is recorded or upon closing the sale of any property not included in a recorded subdivision. Each such area shall have specific permitted uses, as more fully set forth below. Such approved uses within Areas C and L/O shall be performed or carried out entirely within a building that is so designed and constructed that the enclosed operations and uses do not cause or produce a nuisance to other lots or property, such as, but not limited to, vibration, sound, electro mechanical disturbances, electromagnetic disturbances, radiation, air or water pollution, dust, or emission of odorous, toxic, or nontoxic matter (including steam) nor create a potential for explosion or other hazard. Certain activities which cannot be carried on within a building may be permitted provided declarant specifically consents to such activity in writing and further provided such activity is screened so as not to be visible from neighboring property and streets. All lighting is to be shielded so that the light source will not be visible from neighboring property.

(1) *Uses permitted in Area C.* Area C is designated for commercial uses, business and industrial support services, and business and professional offices as may be permitted within the respective zoning regulations of Shelby County and the City of Alabaster. The declarant may amend this section from time to time to allow other and different uses, if such amendment is approved by the governmental entity having jurisdiction.

(2) *Uses permitted in Area L/O.* Area L/O is designated for light industry, research and development, industrial support services, and business and professional offices as may be permitted within the respective zoning regulations of Shelby County and the City of Alabaster. The declarant may amend this section from time to time to allow other and different uses, if such amendment is approved by the governmental entity having jurisdiction.

(3) *Uses permitted in Area AR.* Area AR is designated for air related land uses and activities performed in conjunction with the operations of the Shelby County Airport. The declarant may amend this section from time to time to allow other and different uses.

(4) *Uses permitted in Area A.* Area A is designated for site amenities primarily natural open space and recreational open space.

(b) *Prohibited uses.* The following operations and uses shall not be permitted on any property subject to this declaration:

(1) Residential use of any type other than temporary lodging such as a hotel/motel establishment and quarters for security and emergency personnel;

(2) Trailer courts or recreational vehicle campgrounds;

(3) Junkyards or recycling facilities;

(4) Drilling for and removing oil, gas, or other hydrocarbon substances, the refining of petroleum or its products, and commercial petroleum storage yards;

(5) Commercial excavation of building or construction materials, provided that this prohibition shall not be construed to prohibit any excavation necessary in the course of approved construction;

(6) Distillation of bones;

(7) Dumping, disposal, incineration or reduction of garbage, sewage, offal, dead animals or other refuse;

(8) Fat rendering;

(9) Stockyard or slaughter of animals;

(10) Cemeteries;

(11) Labor or migrant worker camps; or

(12) Truck terminals.

(c) *Nuisances.* No nuisance shall be permitted to exist or operate upon any lot so as to be offensive or detrimental to any adjacent lot or property or to its occupants. A "nuisance" shall include, but not be limited to, any of the following conditions:

- (1) Any use, excluding reasonable construction activity, of the lot which emits dust, sweepings, dirt or cinders into the atmosphere or discharges liquid, solid wastes or other matter into any water reclamation area or other waterway and which, in the opinion of the declarant, may adversely affect the health, safety, comfort or intended use of their property by persons within the area;
- (2) The escape or discharge of any fumes, odors, gases, vapors, steam, acids or other substance into the atmosphere which discharge, in the opinion of the declarant, may be detrimental to the health, safety or welfare of any person or may interfere with the comfort of persons within the area or which may be harmful to property or vegetation;
- (3) The radiation or discharge of intense glare or heat or atomic, electromagnetic, microwave, ultrasonic, laser or other radiation. Any operation producing intense glare or heat or such other radiation shall be performed only within an enclosed or screened area and then only in such manner that the glare, heat or radiation emitted will not be discernible from any point exterior to the site or lot upon which the operation is conducted;
- (4) Any vibration, noise, sound or disturbance which, in the opinion of declarant, is objectionable due to intermittence, beat, frequency, strength, shrillness or volume.

(d) *Condition of property.* The owner or occupant of any lot shall at all times keep it and the buildings, improvements and appurtenances thereon in a safe, clean and wholesome condition and comply at its own expense, in all respects, with all applicable governmental, health, fire and safety ordinances, regulations, requirements and directives and the owner or occupant shall at regular and frequent intervals remove at its own expense any rubbish of any character whatsoever which may accumulate upon such lot.

(e) *Maintenance and repairs.* Each lot and all improvements thereon, including all concrete drains, shall at all times be constructed, kept and maintained by the owner or occupant of the lot in first-class condition, repair and appearance similar to that maintained by declarant and other owners of high-class properties of similar class and construction in Shelby County. All repairs, alterations, replacements or additions to improvements shall be at least equal to the original work in class and quality. The necessity and adequacy of such repairs shall be measured by the same standard as set forth above for the original construction and maintenance and shall be in compliance with design guidelines which may be set by declarant from time to time.

(f) *Refuse collection areas.* All outdoor refuse collection areas shall be completely enclosed and screened by a constructed wall of durable material not less than six (6) feet in height. All such areas shall have concrete floors and shall be sufficient in size to contain all refuse generated on each lot, but in no event smaller than six (6) feet by eight (8) feet. No refuse collection areas shall be permitted between a street and the front of a building.

(g) *Public utilities.* Declarant reserves the sole right to grant consents for the construction and operation of public utilities including, but not limited to, street railways, interurban or rapid transit, freight railways, poles or lines for electricity, telephone or telegraph, above- or below- ground conduits and gas pipes in and upon any and all streets now existing or hereafter established upon which any portion of the subject property may now or hereafter front or abut. Declarant reserves the exclusive right to grant consents and to petition the proper authorities for any and all street improvements, including but not limited to, grading, seeding, tree plantings, sidewalks, paving, sewer and water installation, whether it be on the surface or subsurface, and no owner or occupant shall enter into any contract or agreement with any governmental agency or body or public utility with reference to the installation of any utility service or street improvement without the prior written consent of the declarant. Notwithstanding the provisions of Section 5(b), declarant reserves the exclusive right to approve above-ground utility lines across the subject property or any portion thereof on a temporary basis for the purpose of construction, and such lines shall be permitted when required by a governmental agency.

(h) *Utility lines and antennas.* With the exception of the Alabama Power Company transmission easement, no sewer, drainage or utility lines or wires or other devices for the communication or transmission of electric current, power or signals including telephone, television, microwave or radio signals shall be constructed, placed or maintained anywhere in or upon any portion of the subject

property other than within buildings or structures unless the same shall be contained in conduits or cables constructed, placed or maintained underground or concealed in or under buildings or other structures. No antenna for the transmission or reception of telephone, television, microwave or radio signals shall be placed on any building or other improvement within the subject property unless such antenna shall be so located that it cannot be seen from any point at the ground level of the subject property or the consent of declarant shall first be obtained. Nothing contained herein shall be deemed to forbid the erection or use of temporary power or telephone facilities incidental to the construction or repair of buildings on the subject property.

(i) *Excavation.* No excavation of the subject property or any lot therein shall be made except in connection with construction of an improvement, and upon completion, exposed openings shall be backfilled and disturbed ground shall be graded, leveled and restored to its original condition.

(j) *Noise-sensitive uses.* The southerly property line of the Shelby West Corporate Park is contiguous to an operating airport which may produce noise. Sound-sensitive industries may want to consider locating themselves on sites not adjacent to the airport. However, the area included within the sixty-five (65) Ldn noise contour for the existing noise level is on airport property and is restricted to the immediate runway area.

(k) *Other operations and uses.* Operation and uses which are neither specifically prohibited nor specifically authorized by this declaration may be permitted in a specific case if operational plans and specifications are submitted to and approved in writing by declarant. Approval or disapproval of such operational plans and specifications shall be based upon the effect of such operations or uses on other property subject to this declaration or upon the occupants thereof, but shall be in the sole discretion of declarant.

Section 4. Development Review Committee

(a) *Formation of Committee.* Declarant hereby establishes a Development Review Committee (the "Committee") consisting of five individuals for the purpose of reviewing construction and alteration of improvements within the subject property as set forth in this Section and for the purpose of performing such other functions as are required pursuant to this declaration.

(b) *Selection of Committee members.*

(1) Any adult natural person shall be eligible to be a member of the Committee.

(2) Until more than twenty percent (20%) of the subject property, based upon the number of square feet owned as compared to the acreage subject to this declaration, has been conveyed or sold by declarant to others, declarant shall appoint all members of the Committee. So long as declarant owns at least sixty percent (60%) but less than eighty percent (80%) of the subject property, four members of the Committee shall be named by declarant. So long as declarant owns at least forty percent (40%) but less than sixty percent (60%) of the subject property, three members of the Committee shall be named by declarant. So long as declarant owns at least twenty percent (20%) but less than forty percent (40%) of the subject property, two members of the Committee shall be named by declarant. At such time as declarant owns less than twenty percent (20%) of the subject property but at least five percent (5%), declarant shall name one member of the Committee.

(3) Those members not named by declarant shall be named by a vote of all of the owners. Selection of Committee members to be named by the owners shall occur at an annual meeting of the owners which shall be called by the prior year's Committee upon not less than sixty days and no more than ninety days written notice to all owners. Such notice shall set forth the time, place and purpose of the meeting. The place of the meeting shall be at a location within Shelby County to be designated by the Committee. A quorum at the meeting shall be the owners of at least fifty percent (50%) of the subject property, based upon the number of square feet owned as compared to the acreage subject to this declaration, such fifty percent (50%) to be present at the meeting in person or by proxy. All actions taken at the meeting shall require a majority vote of the owners present at the meeting, in person or by proxy. Each owner shall have one vote for each lot owned by the owner in all matters brought before the meeting. Declarant shall also be entitled to one vote for each proposed lot shown on any recorded plat.

(4) Upon the death or resignation of any Committee member who has been appointed by declarant, or upon the pleasure of the declarant, declarant shall appoint a successor Committee member. Upon the death or resignation of any Committee member not selected by declarant, the remaining Committee members shall select a successor member who shall serve until the next meeting of the owners.

(c) *Rules of procedure.* The Committee may adopt rules and regulations from time to time governing its activities not inconsistent herewith. The Committee shall meet at the convenience of the members thereof as often as necessary to transact its business, acting on the concurrence of three out of the five members.

Section 5. Construction of Improvements

(a) *Approval of plans required.* No improvements shall be erected, placed, altered, maintained or permitted to remain on any lot by any owner or occupant until final plans and specifications shall have been submitted to and approved in writing by the Development Review Committee. Such final plans and specifications shall be submitted in duplicate over the authorized signature of the owner or occupant or both of the lot or the authorized agent thereof. Such plans and specifications shall be in such form and shall contain such information as may be required by the Committee, but shall in any event include the following:

- (1) A site development plan of the lot showing the nature, grading scheme, kind, shape, composition, and location of all structures with respect to the particular lot (including proposed front, rear and side setback lines) and with respect to structures on adjoining lots and the number and location of all parking spaces and driveways on the lot;
- (2) A landscaping plan for the particular lot;
- (3) A plan for the location of signs and lighting; and
- (4) A building elevation plan showing dimensions, materials, and exterior color scheme in no less detail than required by the appropriate governmental authority for the issuance of a building permit. Material changes in approved plans must be similarly submitted to and approved by the Committee.

(b) *Basis for approval.* Approval shall be based, among other things, upon adequacy of site dimensions, adequacy of structural design, conformity and harmony of external design with neighboring structures, effect of location and use of proposed improvements upon neighboring lots, proper facing of main elevation with respect to nearby streets, adequacy of screening of mechanical, air conditioning, or other rooftop installations, and conformity of the plans and specifications to the purpose and Master Plan and intent of this Declaration. Except as otherwise provided in this Declaration, the Committee shall have the right to disapprove any plans and specifications submitted hereunder on any reasonable grounds including, but not limited to, the following:

- (1) Failure to comply with any of the restrictions set forth in this Declaration;
- (2) Failure to include information in such plans and specifications as may have been reasonably requested by the Committee;
- (3) Objection to the exterior design, the appearance of materials, or materials employed in any proposed structure;
- (4) Objection on the ground of incompatibility of any proposed structure or use with existing structures or uses upon other lots or other property in the vicinity of the subject property;
- (5) Objection to the location of any proposed structure with reference to other lots or other property in the vicinity;
- (6) Objection to the grading or landscaping plan for any lot;
- (7) Objection to the color scheme, finish, proportions, style of architecture, height, bulk, or appropriateness of any structure;

(8) Objection to the number or size of parking spaces, or to the design of the parking area; or

(9) Any other matter which, in the judgment of the Committee, would render the proposed improvements or use inharmonious with the Master Plan for improvement of the subject property, the Design Guidelines which the Committee may promulgate from time to time, or with improvements located upon other lots or other property in the vicinity.

(c) *Review fee.* A development review fee shall be paid to the Committee at such time as plans and specifications are submitted to it, based upon the following schedule:

(1) When the plans submitted are prepared by an architect, the development review fee shall be the sum of two hundred fifty dollars (\$250).

(2) In all other cases, the development review fee shall be the sum of five hundred dollars (\$500).

(3) The schedule of review fees may be modified from time to time by the Committee to reflect changed circumstances such as inflation.

(d) *Result of inaction.* If the Committee fails either to approve or disapprove plans and specifications submitted to it for approval within forty-five (45) days after the same have been submitted, it shall be conclusively presumed that the Committee has approved said plans and specifications; provided, however, that if, within the forty-five (45) day period, the Committee gives written notice of the fact that more time is required for the review of such plans and specifications, there shall be no presumption that the same are approved until the expiration of such reasonable period of time as is set forth in the notice.

(e) *Approval.* The Committee may approve plans and specifications as submitted, or as altered or amended, or it may grant its approval to the same, subject to specific conditions. Upon approval or conditional approval by the Committee of any plans and specifications submitted, a copy of such plans and specifications, together with any conditions, shall be deposited for permanent record with the Committee, and a copy of such plans and specifications, bearing such approval together with any conditions, shall be returned to the applicant submitting the same.

(f) *Proceeding with work.* Upon receipt of approval from the Committee pursuant to Section 5(e), the owner or occupant, or both, to whom the same is given, shall, as soon as practicable, satisfy any and all conditions of such approval and shall diligently proceed with the commencement and completion of all approved excavation, construction, refinishing, and alterations. In all cases, work shall commence within one (1) year from the date the owner acquires title to the property, and if work is not so commenced, approval shall be deemed revoked, unless the Committee, pursuant to written request made and received prior to the expiration of said one (1)-year period, extends the period of time with which work must be commenced.

(g) *Completion of work.* Any improvement commenced pursuant hereto shall be completed within two (2) years from the date of the Committee's approval of the plans and specifications therefor, except for so long as such completion is rendered impossible, or unless work upon the proposed improvements would impose a great hardship upon the owner or occupant to whom the Committee's approval is given, due to strike, fire, national emergency, natural disaster, or other supervening force beyond the control of owner or occupant. The Committee may, upon written request made and received prior to the expiration of the two (2)-year period, extend the period of time within which work must be completed. Failure to comply with this paragraph shall constitute a breach of this Declaration and subject the party in breach to the enforcement procedures set forth in Section 10.

(h) *Declarant and Development Review Committee not liable.* Declarant and the Development Review Committee shall not be liable for any damage, loss or prejudice suffered or claimed by any person on account of:

(1) The approval or disapproval of any plans, drawings and specifications whether or not in any way defective;

(2) The construction of any improvement or performance of any work whether or not pursuant to approved plans, drawings and specifications; or

(3) The development of any lot within Shelby West Corporate Park.

(i) *Construction without approval.* If any improvement shall be erected, placed or maintained upon any lot or the exterior design thereof, or any new use commenced upon any lot other than in accordance with the approval by the Committee pursuant to the provisions of this Section, such alteration, erection, placement, maintenance, or use shall be deemed to have been undertaken in violation of this declaration. Upon written notice from the Committee, any such improvement so altered, erected, placed, maintained, or used upon any lot in violation of this declaration shall cease or be amended so as to conform to this declaration. Should such removal or alteration or cessation or amendment of use not be accomplished within thirty (30) days after receipt of such notice, then the party in breach of this declaration shall be subject to the enforcement procedures set forth in Section 10.

(j) *Height Hazard Covenants.*

(1) The Owner reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the controlled airspace as defined in the "Shelby County Airport Zoning Ordinance" above the surface of the real property herein described. Together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the said airspace, and for use of said airspace for landing on, taking off from, or operating on the Shelby County Airport.

(2) The Owner expressly agrees for itself, its successors and assigns to restrict the height of structures, objects of natural growth, and other obstructions occupying a location on the herein described real property under the approach, transitional, horizontal and/or conical zones to a height not to exceed those described by the provisions of the "Shelby County Airport Zoning Ordinance" as presently existing and hereafter as amended. Nothing contained herein shall be construed to require changes to structures found to be in compliance with these regulations at the time of construction. Any building or structure proposed for construction, alteration, modification or erection shall seek the approval of the Federal Aviation Administration by submitting the appropriate form and that of the Administrative Agency so designated in the Ordinance.

(3) The Owner expressly agrees for itself, its successors and assigns to prevent any use on the herein described real property which would interfere with landing or taking off of aircraft at the Shelby County Airport, or that would otherwise constitute a hazard to the flying public. Of particular concern is the emission of smoke, steam or other substances that may interfere with a visual approach to the airport. However, if such emissions are contemplated to occur on a temporary basis, (i.e. in connection with clearing the land), the owner shall notify the airport management of the day and duration the emission is expected to last. Under no circumstances shall the emission of visible light be directed upward or above the horizontal plane of the roof line causing glare or otherwise interfering with the visual approach to the airport.

Section 6. Development Standards

(a) *Minimum setback.* Except as otherwise provided in Section 6(b), no improvements of any kind, and no part thereof, shall be placed within forty (40) feet of any street side property line or within ten (10) feet of any interior property line. Design Guidelines promulgated by the Committee may further modify these required setbacks but in no case shall any setback be made less restrictive than the standards contained herein.

(b) *Exceptions to setback requirements.* The following improvements, or parts of improvements, are specifically excluded from the setback requirements set forth in Section 6(a):

- (1) Unsupported roof overhang or sun screen, subject to approval in writing from the Committee, provided said overhang or sun screen does not extend more than six (6) feet into the setback area;
- (2) Steps and walkways;
- (3) Entrance drives;
- (4) Landscaping and irrigation systems;
- (5) Planters, architectural fences or walls not exceeding forty-two (42) inches in height; and

(6) Underground utility facilities and sewers.

(c) *Landscaping.* Within ninety (90) days following completion of construction, or by the date each improvement is occupied, whichever first occurs, each lot shall be landscaped in accordance with the approved plans and specifications and in conformity with the Shelby West Corporate Park Design Guidelines established by the Committee. After completion, the landscaping shall be maintained in a slightly and well-kept condition. If, in declarant's or the Development Review Committee's reasonable opinion, the required landscaping is not maintained in a slightly and well-kept condition, declarant or the committee shall be entitled to the remedies set forth in Section 11.

(d) *Signs.* No sign shall be permitted on any lot unless approved by the Committee in writing. All signs must comply with the Shelby West Corporate Park Master Plan and Design Guidelines.

(e) *Parking areas.* Off-street parking adequate to accommodate the parking needs of the owner or occupant and the employees and visitors thereof shall be provided by the owner or occupant of each lot. The intent of this provision is to eliminate the need for any on-street parking; provided, however, that nothing herein shall be deemed to prohibit on-street parking of public transportation vehicles. If parking requirements increase as a result of a change in the use of a lot or in the number of persons employed by the owner or occupant, additional off-street parking shall be provided so as to satisfy the intent of this section. All parking areas shall conform to the following standards:

(1) Required off-street parking shall be provided on the lot, on a contiguous lot, or within such distance from the lot as the Committee deems reasonable.

(2) Parking areas shall be paved so as to provide dust-free, all-weather surfaces. Each parking space provided shall be designated by lines painted upon the paved surface and shall be adequate in area. All parking areas shall provide, in addition to parking spaces, adequate driveways and space for the movement of vehicles.

(3) No parking spaces shall be located on or permitted within setback areas adjacent to a street, as set forth in Section 6(a), except that parking spaces may be located on or parking permitted within such area if the Committee's written permission is first obtained.

(f) *Storage and loading areas.* All storage, maintenance, and loading areas must be constructed and used in accordance with plans approved by the Committee. All storage, maintenance, and loading areas must be kept clean and in good condition and repair.

(g) *Floor area ratio.* The maximum floor area ratio on any lot shall not exceed twenty-five percent (25%) of the total square footage of the lot; provided, however, that the declarant may amend this Section from time to time to allow greater maximum building coverage, if each such amendment is approved by any governmental entity having jurisdiction.

(h) *Building height.* The maximum height of all structures within the subject property shall be thirty-five (35) feet unless further restricted by the Shelby County Airport Height Hazard Zoning Ordinance. Some lots, however, may be appropriate for taller buildings. Any structure proposed to exceed thirty-five (35) feet will require the written approval of the Committee, if otherwise allowed by the Master Plan and by the applicable zoning regulations of any governmental entity having jurisdiction.

Section 7. Maintenance of Common Areas and Facilities

(a) *Declarant's maintenance responsibility.* So long as declarant owns any lot, portion of, or interest in the subject property, declarant shall maintain and repair all common areas and facilities located on the subject property further described in Exhibit "A" attached hereto, which common areas shall include all natural areas, miniparks, all fill and cut slopes adjacent to public streets, and all special landscaped areas. Such maintenance and repair shall include, without limitation:

(1) Cleaning, maintenance, and re-lamping of any external lighting fixtures, except such fixtures which are the property of any utility or governmental body;

(2) Performance of necessary maintenance of all landscaping as required within the common areas including the trimming, watering, and fertilization of all grass, groundcover, shrubs and trees; removal of dead or waste material; and replacement of any dead or diseased grass, groundcover, shrubs, or trees;

(3) The removal of trash and rubbish within the common areas;

(4) The cleaning, maintenance and repair of all concrete drains within the common areas or contiguous to streets within the subject property which are not otherwise located upon a lot and thereby the responsibility of an owner or occupant pursuant to Section 3(i);

(5) The regular, periodic cleaning of the streets within the subject property to minimize pollutant runoff;

(6) Maintenance of general public liability insurance for the benefit of declarant and all owners and occupants against claims for bodily injury, death, or property damage occurring on, in, or about the common areas and the adjoining streets, sidewalks, and passageways, but not within any lot or the improvements thereon or within any building located on a lot or within any other area within the exclusive control of any owner or occupant.

(b) *Owner's maintenance responsibility.* Each owner of a lot shall be responsible for the maintenance of its lot and the improvements constructed thereon, including the maintenance or repair of any utility lines which service said owner's lot and/or improvements.

(c) *Maintenance by Development Review Committee.* At such time as declarant no longer owns any lot, portion of, or interest in the subject property, or at any other time by agreement between declarant and the Committee, declarant may assign and delegate the aforesaid maintenance obligation to the Committee. Should the Committee be unwilling or unable to assume such obligation, or after initially assuming such obligation shall thereafter be unable or unwilling to continue such obligation, then the obligation to maintain the common areas and facilities shall be assigned and delegated to the owners of the lots within the subject property, pro rata in accordance with their ownership interests. In such event, owners of fifty-one percent (51%) of the lots within the subject property shall have the right to designate a maintenance operator, and from time to time to replace such operator, to perform all of the maintenance obligations described in this Section. The designation by fifty-one percent (51%) of the owners of such an operator shall be binding upon all other owners.

Section 8. Allocation of Maintenance Costs and Property Taxes

(a) *Allocation of cost of maintaining common areas and facilities.* The cost of maintaining the common areas and facilities and all real property taxes attributable to the common areas shall be allocated pro rata among all of the owners of lots within the subject property. Each lot shall bear its pro rata share of all such costs and real property taxes.

(b) *Computation of maintenance costs.* All of the costs incurred by declarant to perform its obligations set forth in Section 7(a) hereof shall include all of the declarant's actual out-of-pocket expenses to perform such services; the cost of administration thereof, including the cost of accounting for the computation and collection of maintenance costs and real property taxes; a reasonable reserve for delinquent accounts; plus any costs incurred to provide security to the subject property, if necessary; all of such costs to be determined in accordance with generally accepted accounting principles consistently applied.

(c) *Assessment of costs.* All estimated costs and expenses of maintenance except those attributable to real property taxes shall be assessed in advance by declarant or any subsequent maintenance operator and billed to each owner not less frequently than once each calendar quarter. Such assessments shall be paid by each owner promptly upon receipt thereof. The amount, if any, by which any assessments received in advance from any owner exceed such owner's actual share of maintenance expenses for a billing period shall be credited against the estimated costs and expenses for the ensuing billing period. Real property taxes attributable to the common areas shall be billed to each owner as soon as reasonably possible after receipt of the tax bills from the taxing agency. Each owner shall remit one-half of his pro rata share of such taxes prior to December 1 of each year, and the balance prior to April 1 of the following year.

(d) *Creation and enforcement of maintenance and tax assessment lien.*

(1) Declarant, in its capacity as owner of the subject property hereby covenants and agrees to pay, and each subsequent owner of a lot, by acceptance of title thereto, whether or not it shall be so expressed in any conveyance of said lot, is deemed to covenant and agree to pay all assessments for maintenance and real property taxes as set forth in the preceding paragraph, such assessments to be fixed, established, and collected from time to time as provided in this

declaration. Such assessments, together with interest thereon as hereafter set forth and together with the cost of collection thereof, shall be a charge on the land and shall be a continuing lien upon each lot against which each such assessment is made.

(2) In the event that any owner shall fail to pay such owner's assessment within 10 days after such costs, expenses, and taxes have been assessed to such owner, declarant may at any time within two years from the date such assessment becomes due, file a claim of lien signed by Declarant together with interest thereon, which claim shall contain: (1) a statement of the amount unpaid, the amount of such advance, and the interest accrued thereon; (2) a legal description of the lot owned by such delinquent Owner; and (3) the name of the delinquent Owner. Such claim of lien shall be effective to establish a lien against the interest of the delinquent Owner and his lot, together with interest on the amount of such assessment from the date thereof, at a rate equal to the greater of 10% per annum or 1% greater than the prime rate then in effect, plus recording fees, cost of title search obtained in connection with such lien or the foreclosure thereof, and court costs and reasonable attorney's fees which may be incurred in the enforcement of such a lien.

(3) Such a lien, when so established against the lot described in said claim, shall be prior or superior to any right, title, interest, lien, or claim which may be or may have been acquired in or attached to the real property interests subject to the lien subsequent to the time of filing such claim for record, other than (1) the lien for real property taxes and assessments, or (2) the lien of any deed of trust given to serve a note, the proceeds of which were used to improve and develop the lot subject to the lien. Such lien shall be for the benefit of Declarant and may be enforced and foreclosed in a suit or action brought by Declarant in any court of competent jurisdiction, if brought within one year of the filing of such claim.

(4) Any such sale provided for herein is to be conducted in accordance with the provisions of the Code of Alabama applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted or provided by law. Declarant or any Owner, through their duly authorized agents, shall have the power to bid on the lien property at any foreclosure sale, and to acquire, lease, mortgage, and convey the same.

(5) Upon the timely curing of any default for which a notice of claim of lien was filed, Declarant or the Owner claiming such lien is hereby authorized to file or record, as the case may be, an appropriate release of such notice, upon payment by the defaulting Owner of a fee, to be determined by the lien claimant, to cover the costs of preparing and filing or recording such release, together with the payment of such other costs, interest, or fees as shall have been incurred. The assessment lien and the rights to foreclose thereunder shall be in addition to, and not in substitution for, all other rights and remedies which any party may have hereunder and by law, including a suit to cover a money judgment for unpaid assessments.

(6) In the event that the Committee or any other person or entity shall assume the responsibility for maintenance of the common areas and facilities, pursuant to Section 7(c) hereof, such person or entity shall be entitled to determine the amounts and make the assessments provided for in this Section and to enforce the lien rights established in this Section.

Section 9. Modification and Appeal

(a) *Procedure.* Except as otherwise provided in Sections 9(b) and 9(c), this Declaration or any provision hereof, or any covenant, condition, or restriction contained herein, may be terminated, extended, modified, or otherwise amended, as to the whole of the subject property or any portion thereof, with the written consent of the Owners of fifty-one percent (51%) of the subject property, based upon the number of square feet owned as compared to the acreage subject to these covenants, conditions, and restrictions; provided, however, that so long as Declarant owns at least five percent (5%) of the property subject to these covenants, conditions, and restrictions, no such termination, extension, modification, or other amendment shall be effective without the written approval of Declarant. No such termination, extension, modification, or other amendment shall be effective until a proper instrument in writing has been executed, acknowledged, and recorded.

(b) *Modification by Declarant.* For so long as Declarant owns any interest (excepting a leasehold interest) in the subject property or any part thereof, or for a period of twenty-five (25) years from the effective date hereof, whichever period is shorter, Declarant acting alone may modify or amend the provisions of Sections 3, 5, and 6; provided, however, that (1) any such modification or amendment must

be within the spirit and overall intention of the development as set forth herein; (2) prior to any such modification or amendment, Declarant shall obtain the approval of any governmental agency to such modification or amendment where such approval is necessary; and (3) any modification or amendment shall not provide for any type of improvements or use not presently permitted by this Declaration. No such modification or amendment shall be effective until a proper instrument in writing has been executed, acknowledged, and recorded.

(c) *Governmental regulation.* All valid governmental enactments, ordinances, and regulations are deemed to be a part of this Declaration, and to the extent that they conflict with any provisions, covenants, condition, or restriction hereof, said conflicting governmental enactment, ordinance, and regulation shall control, and the provision, covenant, condition, or restriction hereof in conflict therewith shall be deemed amended to the extent necessary to bring it into conformity with said enactment, ordinance, or regulation while still preserving the intent and spirit of the provision, covenant, condition, or restriction; or stricken therefrom should no amendment conforming to the governmental enactment, ordinance, or regulation be capable of preserving the intent and spirit of said provision, covenant, condition, or restriction.

Section 10. Enforcement

(a) *Default and remedies.* In the event of any breach, violation, or failure to perform or satisfy any covenant, conditions, or restriction which has not been cured within 30 days after written notice to do so, Declarant at its sole option and discretion may enforce any one or more of the following remedies or any other rights or remedies to which Declarant may be entitled by law or equity, whether or not set forth herein. All remedies provided herein or by law or equity shall be cumulative and not mutually exclusive.

(1) *Damages.* Declarant may bring suit for damages for any compensable breach of or noncompliance with any of the covenants, conditions, or restrictions, or declaratory relief to determine the enforceability of any of these covenants, conditions, or restrictions.

(2) *Equity.* It is recognized that a violation by an Owner of one or more of the foregoing covenants, conditions, or restrictions may cause Declarant to suffer material injury or damage not compensable in money, and that Declarant shall be entitled to bring an action in equity or otherwise for specific performance to enforce compliance with these covenants, conditions, and restrictions or an injunction to enjoin the continuance of any such breach or violation thereof.

(3) *Abatement and lien rights.* Any such breach or violation of these covenants, conditions, and restrictions or any provision hereof is hereby declared to be a nuisance, and Declarant shall be entitled to enter the site or portion of the subject property as to which the breach or violation exists and summarily abate and remove, without further legal process, to the maximum extent permitted by law, any structure, thing, or condition that may exist in violation of any of these restrictions; or take those actions which are required of any person or entity which is subject to this Declaration; or to prosecute any remedy allowed by law or equity for the abatement of such nuisance against any person or entity acting or failing to act in violation of these restrictions-all at the sole cost and expense of Owner or any person having possession under Owner. Any costs or expenses paid or incurred by Declarant in abating such nuisance or prosecuting any such remedy (including all reasonable attorneys' fees and costs of collection), together with interest thereon at the rate of 10% per annum, shall be a charge against the site or portion of the property as to which the breach or violation exists, and shall also be the personal obligation of that person who was Owner when such charges became due or who committed such breach or violation. In addition to any other rights or remedies hereunder, Declarant may deliver to Owner and record with the Probate Judge of Shelby County a certificate or notice of claim of lien (which, among other things, may, but need not, recite the nature of the violation, the legal description of the site or portion of the property affected by such violation, the record or reputed Owner thereof, Declarant's name and address, and the remedies being pursued by Declarant or the amount of any such lien claim has not been charged) to Declarant's satisfaction, and if any recited amounts so charged have not been paid within 30 days thereafter, Declarant or its authorized representatives may foreclose such lien by a sale conducted pursuant to the Code of Alabama as applicable to the exercise of powers of sale in mortgages or deeds of trust, or in any other manner permitted by law. Declarant, through its authorized representatives, may bid on and acquire any property subject to such lien at any such foreclosure sale. If the violations recited in such lien claim are timely cured and any recited amounts timely paid as provided above, Declarant shall forthwith record an appropriate release of such lien at Owner's sole expense.

(b) *Waiver.* No waiver by Declarant of a breach of any of these restrictions, and no delay or failure to enforce any of these restrictions, shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other of these covenants, conditions, and restrictions. No waiver by Declarant of any breach or default hereunder shall be implied from any omission by Declarant to take any action on account of such breach or default if such breach or default persists or is repeated, and no express waiver shall affect a breach or default other than as specified in said waiver. The consent or approval by Declarant to or of any act by an Owner requiring Declarant's consent or approval shall not be deemed to waive or render unnecessary Declarant's consent or approval to or of any similar acts by Owner.

(c) *Costs of enforcement.* In the event any legal or equitable action or proceeding shall be instituted to enforce any provision of these restrictions, the party prevailing in such action shall be entitled to recover from the losing party all of its costs, including court costs and reasonable attorneys' fees.

(d) *Non-exclusive rights of enforcement.* The rights of enforcement granted to Declarant are non-exclusive and shall be exercisable by Declarant for so long as Declarant owns any interest in the subject property. Concurrently, each Owner and the Development Review Committee, its successors, and assigns, are hereby granted all of the rights of enforcement and the remedies provided to Declarant by this Section. Any such Owner or the Committee may seek enforcement of all remedies in accordance with the provisions of this Section independently of Declarant.

(e) *Enforcement by governmental authorities.* Governmental authorities with jurisdiction may independently enforce those portions of the Declaration which directly relate to the conditions, duties, or obligations required or imposed by specific approvals or permits. In the event a governmental authority elects to seek enforcement, or in the event of a breach of any duty or interference with any of the rights or benefits herein established, the governmental authority may give written notice of such breach or interference to the Declarant or the Development Review Committee together with a written demand to remedy the breach or interference by enforcing the Declaration. If the Declarant or the Committee refuse to do so, or fail to take appropriate action within ninety (90) days of the receipt of said written notice, the governmental authority shall have the full power to enforce the Declaration, including without limitation the power to assess, to lien, and to foreclose, in respect to the matters set forth in the notice. Any funds collected by the governmental authority shall be applied, after deducting expenses of enforcement, to correct the breach of interference, and any excess funds shall be applied for the benefit of the Declarant or the Committee for the reimbursement of any expenses incurred.

Section 11. Generally

(a) *Assignment.* Any and all the rights, powers, and reservations of Declarant herein contained may be assigned to any person, corporation, or association which will assume the duties of Declarant pertaining to the particular rights, powers, and reservations assigned, and upon any such person, corporation, or association evidencing its consent in writing to accept such assignment and assume such duties, he or it shall, to the extent of such assignment, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant herein.

(b) *Constructive notice and acceptance.* Every person or entity who now or hereafter owns, occupies, or acquires any right, title, or interest in or to any portion of the subject property is and shall be conclusively deemed to have consented and agreed to every covenant, condition, and restriction contained herein, whether or not any reference to this Declaration is contained in the instrument by which such person acquired an interest in the subject property.

(c) *Waiver.* Neither Declarant nor its successors or assigns shall be liable to any Owner or Occupant of the subject property by reason of any mistake in judgement, negligence, nonfeasance, action, or inaction or for the enforcement or failure to enforce any provision of this Declaration. Every Owner or Occupant of any of said property by acquiring its interest therein agrees that it will not bring any action or suit against Declarant to recover any such damages or to seek equitable relief because of same.

(d) *Runs with land.* All covenants, conditions, restrictions, and agreements herein contained are made for the direct, mutual, and reciprocal benefit of each and every lot of the subject property; shall create mutual equitable servitude upon each lot in favor of every other lot; shall create reciprocal rights and obligations between respective Owners and Occupants of all lots and privity of contract and estate between all grantees of said lots, their heirs, successors, and assigns; and shall as to the Owner and Occupant of each lot, his heirs, successors, and assigns, operate as covenants running with the land, for the benefit of all other lots except as provided otherwise herein.

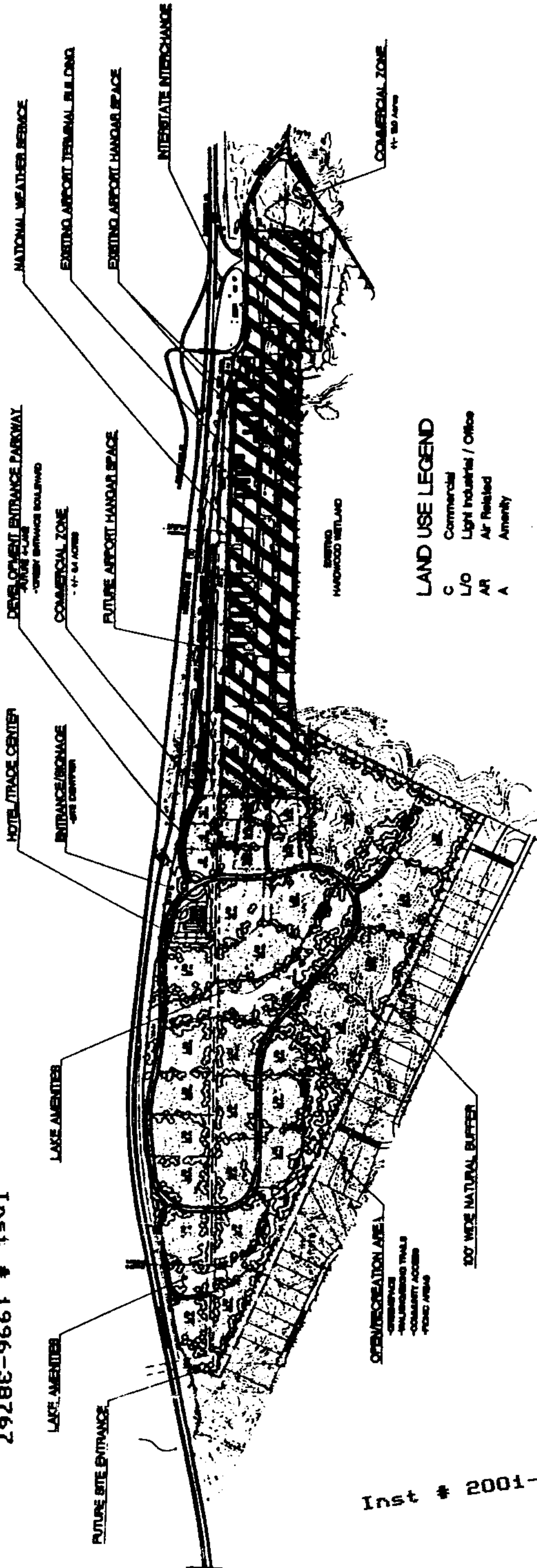
(e) *Rights of mortgagees.* No breach or violation of these covenants, conditions, and restrictions shall defeat or render invalid the lien of any mortgage, deed of trust, or similar instrument securing a loan made in good faith and for value with respect to the development or permanent financing of any lot or portion thereof; provided that all of these restrictions shall be binding upon and effective against any subsequent Owner of the property or any portion thereof whose title is acquired by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise pursuant to such lien rights.

(f) *Captions.* The captions of sections and paragraphs herein are used for convenience only and are not intended to be a part of this Declaration or in any way to define, limit, or describe the scope and intent of the particular section or paragraph to which they refer.

(g) *Effect of invalidation.* If any provision of this Declaration is held to be invalid by any court, the invalidity of such provision shall not affect the validity of the remaining provisions hereof.

11/22/1996-38767
02:36 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
013 MCD .00

Inst # 1996-38767



LAND USE LEGEND

- C Commercial
- L/O Light Industrial / Office
- AR Air Related
- A Amenity

Note: The area subject to the preceding covenants and restrictions as shown on this Exhibit "A", includes only land owned by Shelby County less and except that portion specifically reserved for use by the Shelby County Airport, its tenants and lessees (area cross-hatched).



MASTER PLAN

SHELBY WEST CORPORATE PARK

A Commerce, Industry and Technology Complex

Inst # 2001-20649

05/22/2001-20649
08:01 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
016 MB .00

REECE
HOOPER &
FINCHER

Land Planning
Landscape Architecture
1000 10th Avenue
Nashville, TN 37203
615-259-1100

SPRING 1998