

FIRST AMENDMENT TO

FOOTHILLS POINT

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS THE FIRST AMENDMENT TO FOOTHILLS POINT DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made as of the 25th day of October, 2005 by FOOTHILLS HOMES, INC., an Alabama corporation ("Seller").

RECITALS:

Seller has heretofore executed the Foothills Point Declaration of Covenants, Conditions and Restrictions dated December 19, 2003, which was recorded as Instrument #20031223000824110 in the Probate Office of Shelby County, Alabama (the "Declaration"). Capitalized terms not otherwise expressly defined herein shall have the same meanings given to them in the Declaration.

Seller desires to submit Additional Property to the terms and provisions of the Declaration, as provided in Section 2.2 of the Declaration.

NOW, THEREFORE, in consideration of the premises, Seller does hereby amend the Declaration as follows:

1. **Additional Property.** Pursuant to the terms and provisions of Section 2.2 of the Declaration, Seller does hereby declare that the real property described in Exhibit A.1 attached hereto and incorporated herein by reference (the "Additional Property") shall be held, developed, improved, transferred, sold, conveyed, leased, occupied and used subject to all of the easements, covenants, conditions, restrictions, charges and regulations set forth in the Declaration, which shall be binding upon and inure to the benefit of all parties acquiring or having any right, title or interest in any portion of the Additional Property and their respective heirs, executors, administrators, personal representatives, successors and assigns. The Additional Property described in Exhibit A.1 attached hereto, the original Property described in the Declaration and all Additional Property heretofore submitted by Seller to the terms and provisions of the Declaration shall, for the purposes of the Declaration, collectively be referred to as the Property and all references in the Declaration to the Property shall mean the original Property as described in the Declaration, all Additional Property heretofore submitted to the terms and provisions of the Declaration as well as the Additional Property described herein.

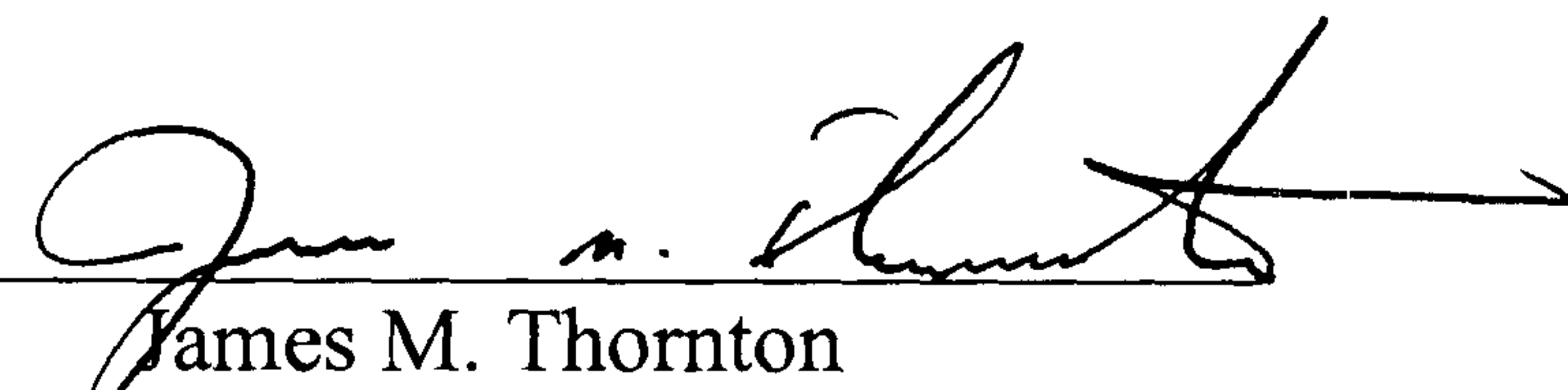
2. **Full Force and Effect.** Except as specifically modified and amended

herein, all of the terms and conditions of the Declaration shall remain in full force and effect.

IN WITNESS WHEREOF, Seller has caused this First Amendment to the Foothills Point Declaration of Covenants, Conditions and Restrictions to be executed as of the day and year first above written.

SELLER:

FOOTHILLS HOMES, INC.,
an Alabama corporation

By: 
James M. Thornton
Its President

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned, a notary public in and for said County in said State, hereby certify that James M. Thornton, whose name as President of FOOTHILLS HOMES, INC., an Alabama corporation, 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 said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal, this the 25TH day of October, 2005.


Notary Public

[SEAL]
My Commission Expires:
5-27-07

This Instrument prepared by and upon recording should be return to:

Mary Thornton Taylor
% 421 Office Park Drive
Birmingham, Alabama 35223

CONSENT OF MORTGAGEE

First American Bank ("Mortgagee"), as the holder of that certain Future Advance Mortgage, Assignment of Rents and Leases and Security Agreement dated as of October 25, 2005, and recorded as Instrument No. 20051026000556800 in the Office of the Judge of Probate of Shelby County, Alabama, as such mortgage is amended or modified from time to time, has hereby joined in the execution of this First Amendment to the Foothills Point Declaration of Covenants, Conditions and Restrictions for the purpose of consenting to the execution of said First Amendment and all of the terms and provisions set forth therein; provided, however, that such consent shall not be deemed a consent to any further amendment to the terms and provisions of the Declaration.

Dated as of the 25th day of October, 2005.

FIRST AMERICAN BANK

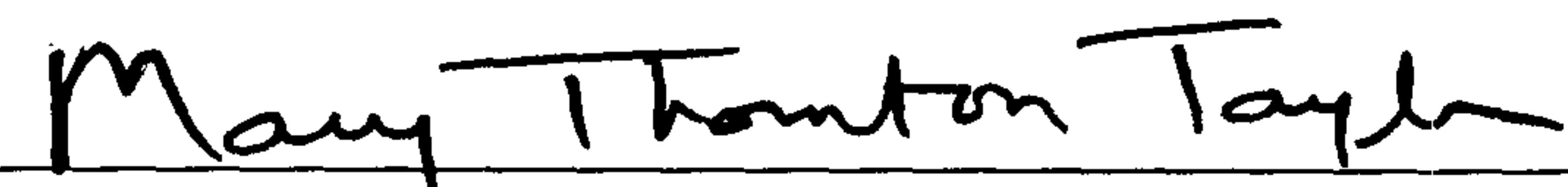
By: 

Its: VP

STATE OF ALABAMA)
COUNTY OF JEFFERSON)


I, the undersigned, a Notary Public in and for said county in said state, hereby certify that Chris Cotton, whose name as Vice President, of First American Bank, 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 said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said Bank.

Given under my hand and official seal, this the 25th of October, 2005.


Notary Public

[SEAL]
My commission Expires:
5-27-07

EXHIBIT A.1


20051102000569440 4/4 \$20.00
Shelby Cnty Judge of Probate, AL
11/02/2005 11:27:56AM FILED/CERT

**FOOTHILLS POINT
THIRD SECTOR**

Lots 1 through 23, inclusive, according to the survey of Foothills Point, Third Sector, as recorded in Map Book 35, Page 136 in the Probate Office of Shelby County, Alabama.