

This instrument prepared by: Jack P. Stephenson, Jr.,
3000 SouthTrust Tower, Birmingham, Alabama 35203

STATE OF ALABAMA)
)
COUNTY OF SHELBY)

DECLARATION OF PROTECTIVE COVENANTS

FOR

BROOK HIGHLAND, A RESIDENTIAL SUBDIVISION

THIS DECLARATION OF PROTECTIVE COVENANTS (hereinafter referred to as the "Declaration") is made as of this 14th day of July, 1988 by Eddleman & Associates, a joint venture in the form of an Alabama general partnership, (hereinafter referred to as the "Developer"), which declares that the real property hereinafter described is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth (sometimes hereinafter referred to as the "Protective Covenants").

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WHEREAS, the Developer is presently the owner of all of the real property described in the following: (i) Plat of Brook Highland, First Sector prepared by K. B. Weygand & Associates, P.C. and recorded in the Office of the Judge of Probate of Shelby County, Alabama, in Map Book 12, at page 62; Plat of Brook Highland, Second Sector, prepared by K. B. Weygand & Associates, P.C. and recorded in the Office of the Judge of Probate of Shelby County, Alabama, in Map Book 12, at page 63; and (iii) Plat of Brook Highland, Third Sector, prepared by K. B. Weygand & Associates, P.C. and recorded in Map Book 12, at page 64; and

WHEREAS, the Developer desires to establish and enforce uniform standards of development quality and to provide for the effective preservation of the appearance, value and amenities of real property herein described and for the maintenance and administration of certain areas thereof which benefit all owners of property therein and, to this end, desires to subject said real property, together with such additions thereto as may hereafter be made, to the Protective Covenants, all of which are for the benefit of the said real property and each owner thereof; and

WHEREAS, the Developer has deemed it desirable for the establishment and enforcement of uniform standards of development quality and the effective preservation of the appearance, value and amenities to create a nonprofit corporation (sometimes hereinafter referred to as the "Association") to which should be delegated and assigned the powers of maintaining and administering certain areas thereof which benefit all owners of property

therein and enforcing the Protective Covenants and of levying, collecting and depositing such charges and assessments as may be authorized in this Declaration for that purpose; and

WHEREAS, the Developer has incorporated the Association under the laws of the State of Alabama, as a nonprofit corporation, for the purpose of exercising the aforesaid functions.

NOW, THEREFORE, the Developer declares that the real property described in Section 2.01 hereof, and such additions thereto as may hereafter be made pursuant to Section 2.02 hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the Protective Covenants, all of which shall be construed as and deemed to be covenants running with the land and shall be binding on and inure to the benefit of all parties having a right, title or interest in the said real property, as well as their heirs, successors and assigns.

ARTICLE I

DEFINITIONS

The following words, when used in this Declaration (unless the context shall prohibit), shall have the following meanings:

1.01 "Association" shall mean and refer to Brook Highland Homeowners' Association, Inc., an Alabama nonprofit corporation, as well as its successors or assigns. This is the Declaration of Protective Covenants to which the Articles of Incorporation (hereinafter referred to as the "Articles") and By-Laws (hereinafter referred to as the "By-Laws") of the Association make reference. Copies of the Articles and By-Laws are attached hereto and made a part hereof as EXHIBITS "A" and "B", respectively.

1.02 "Common Area" shall mean and refer to all real and/or personal property which the Association and/or the Developer owns, leases, or has otherwise acquired for the common use and enjoyment of the members of the Association, and all real and/or personal property within or in the vicinity of the Property (hereinafter defined) in which the Association and/or the Developer has an interest for the common use and enjoyment of the members of the Association, including, without limitation, a right of use (such as but not limited to, easements for surface water collection and retention, and licenses to use recreational facilities). In addition, the median in any portion of a private or dedicated road, within or abutting the Property including, without limitation, Brook Highland Drive, shall be included in the Common Area unless otherwise provided in the instruments

evidencing the dedication of such road. The use of the Common Area shall be restricted to park landscape, entry features, directional graphic system, drainage and retention, landscape medians, security, safety, pedestrian paths, roads, lighting, recreational facilities or any other use to which the Board of Directors of the Association may accede.

Developer agrees that all of the Common Area, fee simple title to which may be owned or held by Developer, shall be conveyed to the Association not later than sixty (60) days after Developer relinquishes control of the Board of Directors pursuant to Article Sixth of the Articles of the Association.

1.03 "Developer" shall mean and refer to Eddleman & Associates, a joint venture in the form of an Alabama general partnership comprised of Jefferson Land Services, Inc. and The Meadows, Ltd., or its successors or assigns if such successor or assign acquires any portion of the Property from the Developer and is designated as successor developer by Eddleman & Associates.

1.04 "Institutional Mortgagee" shall mean and refer to any federal or state chartered bank, life insurance company, federal or state savings and loan association or real estate investment trust which holds a first mortgage or other first lien or charge upon any Lot or portion of a Lot or any interest therein which is of record in the Office of the Judge of Probate of Shelby County, Alabama.

1.05 "Lot" shall mean and refer, to the individual lots (as defined in the Subdivision Regulations of the Shelby County Planning Commission) as reflected on subdivision plat(s) for the Property as recorded in the Office of the Judge of Probate of Shelby County, Alabama, as the same may be amended from time to time. Any portion of the Property not included in the subdivision plat shall be considered a single Lot.

1.06 "NCNB" shall mean NCNB National Bank of North Carolina, as Trustee for the Public Employees Retirement System of Ohio including its duly appointed Ancillary trustee(s) and any successor trustee(s).

1.07 "NCNB Property" shall refer to the real property situated in Shelby County, Alabama, currently owned by AmSouth Bank N.A. an Ancillary Trustee for NCNB National Bank of North Carolina as Trustee for the Public Employees Retirement System of Ohio consisting of approximately 795 acres, which property is more particularly described on Exhibit D to this Declaration.

1.08 "Owner" shall mean and refer to one or more persons or entities who or which have fee simple title to any Lot, including

contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

1.09 "Property" shall mean and refer to all real property which is presently or may hereafter be subject to this Declaration pursuant to Article II hereof.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION, ADDITIONS THERETO, DELETIONS THEREFROM

2.01 Legal Description. The real property which presently is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in Shelby County, Alabama, and is described in the following: (i) Plat of Brook Highland, First Sector, prepared by K. B. Weygand & Associates, P.C. and recorded in the Office of the Judge of Probate of Shelby County, Alabama in Map Book 12 at page 62; Plat of Brook Highland, Second Sector, prepared by K. B. Weygand & Associates, P.C. and recorded in the Office of the Judge of Probate of Shelby County, Alabama, in Map Book 12, at page 63; and (iii) Plat of Brook Highland, Third Sector, prepared by K. B. Weygand & Associates, P.C. and recorded in the Probate Office of Shelby County, Alabama, in Map Book 12, at page 64.

2.02 Additions to Property. Upon the approval in writing of the Association, the owner of any property who desires to subject it to this Declaration, may file a Supplementary Declaration to that effect in the Office of the Judge of Probate of Shelby County, Alabama. Such Supplementary Declaration may contain such complementary additions to and modifications of the Protective Covenants as the Association shall determine to be necessary or proper to reflect the different character, if any, of the additional property, provided they are not inconsistent with the general plan of this Declaration.

2.03 Withdrawals of Property. The Association may at any time or from time to time withdraw portions of the Property from this Declaration, provided only that the withdrawal of such portions of the Property shall not, without the joinder or consent of the Owners of Lots constituting over one-half of the then existing acreage of the Property, increase by more than one-fourth (1/4) the share of Association expenses payable by the Owners of Lots which would remain subject hereto after such withdrawal. The withdrawal of Property as aforesaid shall be evidenced by filing in the Office of the Judge of Probate of Shelby County, Alabama, a Supplementary Declaration setting forth the portions of the Property to be so withdrawn.

2.04 Platting and Subdivision of the Property. The Developer shall be entitled at any time and from time to time, to subdivide, plat and/or re-plat all or any part of the Property, and to file subdivision restrictions and/or amendments thereto with respect to any undeveloped portion or portions of the Property.

2.05 Approval by NCNB. Notwithstanding the aforesaid provisions of this Article II, the Association shall not subject additional property to this Declaration under Section 2.02 above, withdraw any portion of the Property from this Declaration under Section 2.03 above, or file subdivision restrictions and/or amendments thereto as provided in Section 2.04 above, so long as NCNB owns any of the NCNB Property unless NCNB shall consent thereto; and the Developer shall not subdivide, plat and/or re-plat all or any part of the Property so long as NCNB owns any of the NCNB Property unless NCNB shall consent thereto.

ARTICLE III

EASEMENTS

3.01 Owner's Easement With Respect To Common Areas. Every Owner shall have a right and easement of enjoyment in and to all Common Areas subject to the limitations set forth in Section 3.04 of this Declaration.

3.02 Owner's Mutual, Reciprocal, Non-Exclusive, Easement for Ingress and Egress and/or Utilities, Other Services and Drainage. In the event that all of the Owners shall agree, they may elect to create, by having all affected Owners file a declaration in the Office of the Judge of Probate of Shelby County, Alabama, one or more mutual, reciprocal, non-exclusive easement(s) in favor of each Owner, in common with all other Owners, and their respective tenants, employees, guests, invitees, licensees, agents and contractors under, through and over such portions of the Property as are designated therein in order to: (1) permit vehicular and pedestrian traffic over, through and across such areas designated therein as may from time to time be paved and intended and designated for such purposes and use, and (2) install, maintain, use, repair and replace wires, pipes, conduits, utility lines, sewer and storm drainage lines and other services located or to be located on the Property. The use of each such easement may be made subject to such terms and restrictions as the Owners may agree and set forth in such declaration. In the event that all of the Owners shall agree, they may elect to have the Association maintain any such easement or easements.

3.03 Additional Easements and Uses. For so long as the Developer owns any Lot, the Developer, and, thereafter, the Association, on its own behalf and on behalf of all Owners, who hereby appoint the Developer and/or the Association, as the case may be, irrevocably, as their attorney-in-fact for such purposes, shall have the right to grant such additional electric, telephone, water, sanitary sewer, landscaping, irrigation, security, maintenance, drainage, gas, cable television and/or other utility, recreational or service easements or facilities (subject to applicable restrictions), in any portion of the Property, and to grant access easements or relocate any existing access easements in any portion of the Property, as the Developer or the Association shall deem necessary or desirable for the proper operation and maintenance of the Property, or any portion thereof, or for the general welfare of the Owners, or for the purpose of carrying out any provisions of this Declaration, provided (a) such new easements or relocation of existing easements will not, in the opinion of the Board of Directors of the Association, unreasonably interfere with any Owner's enjoyment of the portion of the Property owned by such Owner, (b) any required work is done at the sole cost and expense of the Association, and after completing such work, the Association will restore any portion of the Property which was affected to the same or as good a condition as existed immediately before the commencement of such work, and (c) following the completion of such work, the Association shall cause a survey to be made of the easement showing its location on the Property and cause the same to be recorded in the Office of the Judge of Probate of Shelby County, Alabama; and provided further that the Developer shall not grant any such easements or relocate any existing easements so long as NCNB owns any of the NCNB Property unless NCNB shall consent thereto. Such right of the Developer and/or the Association shall also include the right to provide for such simultaneous or concurrent usage of any presently existing or additional easements for such purposes, not infringing upon their stated purposes, as it may deem necessary or desirable, including, but not limited to, their use for the recreational purposes of the Owners, their respective tenants, employees, guests, invitees, licensees and agents.

3.04 Limitations. Any easements which may be created pursuant to this Article shall be appurtenant to and the benefits and burdens thereof shall pass along with the title to every Lot and are further subject to the following limitations:

(a) All provisions of this Declaration and the Articles and By-Laws of the Association;

(b) All rules and regulations governing the use and enjoyment of the Common Areas which have been or may hereafter be adopted by the Association; and

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(c) All restrictions contained on any and all plats of all or any part of the Common Areas or any other part or parts of the Property.

3.05 Additional Documents. All Owners shall be required to execute such other documents as are necessary or convenient to effectuate the intent of this Declaration with respect to all easements which may be created pursuant to this Article.

ARTICLE IV

COVENANTS FOR MAINTENANCE ASSESSMENTS

4.01 Affirmative Covenant to Pay Assessments. Each Owner, by acceptance of a deed or other instrument of conveyance for a Lot, whether or not it shall be so expressed in any such deed or other instrument, including any purchaser at a judicial sale, shall be obligated and hereby covenants and agrees to pay to the Association, in the manner set forth herein, all Assessments determined in accordance with the provisions of this Declaration.

4.02 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the preservation of the appearance, value and amenities of the Property, and in particular for the improvement, preservation, maintenance and administration of the Common Areas and of any easement in favor of the Association, and for the establishment of reserves therefor, as well as for such other purposes as are properly undertaken by the Association.

4.03 Annual Assessments. The Association shall levy Annual Assessments in such amounts as are necessary to meet the Common Expenses (as defined in Article V below) and such other recurring or projected expenses as the Board may deem appropriate. The Assessment year for the Annual Assessment need not be the calendar year.

4.04 Special Assessments. In addition to the Annual Assessments specified in Section 4.03 above, the Association may at any time levy one or more Special Assessments for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, or expected or unexpected repair to or replacement of any of the Common Areas, including any fixtures and personal property related thereto.

4.05 Duties of the Board of Directors. The Board of Directors of the Association shall fix the amount of all Assessments, the date of commencement for each Assessment, and the due date of such Assessment, on a per Lot basis, at least thirty (30) days in advance of any such commencement date, and shall at that

time, prepare a roster of the Lots and Assessments applicable thereto, which roster shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of the amount of the Assessment, the commencement and due dates shall be sent to every Owner subject thereto not later than seven (7) days after fixing the date of commencement.

4.06 Date of Commencement and Due Date For Assessments. The liability of a Lot for any Assessment shall commence on the date or dates (which shall be the first day of a month) fixed by the Board in the resolution authorizing such Assessment. The due date of any such Assessment (which may be different from the commencement date) shall also be fixed in the resolution authorizing such Assessment (but which need not be the first day of a month). Such Assessments shall be payable in advance in monthly, quarterly, semi-annual or annual installments, as so fixed in the resolution authorizing the Assessment.

4.07 Allocation of Assessment. The Board shall allocate a portion of each Assessment to each Lot in the proportion that each Lot bears to the total number of Lots within the Property (to the nearest one-thousandth).

4.08 Certificates Concerning Assessments. The Association shall, upon demand at any time, furnish to any Owner liable for any Assessment or his designee a certificate in writing signed by an officer of the Association, setting forth whether said Assessment has been paid. Such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

4.09 Liability of Owners for Assessments.

(a) No Owner may exempt himself from liability for any Assessment levied against his Lot by waiver of the use or enjoyment of any of the Common Areas, or by abandonment of the Lot or in any other manner except as provided in subparagraph (b) below.

(b) In the event that the Association elects to make certain Common Areas available for use by Owners on an optional basis, then any assessment for Common Expenses attributable to such Common Area shall be assessed against and allocated among the Owners who affirmatively elect to use such Common Area in the manner prescribed by the Board of Directors of the Association and those Owners who do not affirmatively elect to use such Common Area shall not be liable for any assessment for Common Expenses attributable to such Common Area. Unless otherwise agreed to in writing, an Owner may elect to discontinue his use of those Common Areas made available to Owners on an optional basis at any time by delivery of written notice to the

Association in which event the Owner shall have no liability for any further liability for assessments for Common Expenses with respect to such Common Areas effective on the first day of the first calendar month commencing not less than thirty (30) days after deliver of such notice.

4.10 Effect of Non-Payment of Assessments: The Lien, the Personal Obligation; Remedies of the Association.

(a) If any Assessment or other charge or lien provided for herein is not paid in full on the due date set by the Board, then such Assessment charge or lien shall become delinquent on the thirtieth day thereafter, and together with interest thereon and cost of collection thereof as are hereinafter provided, thereupon become a continuing lien on the Lot encumbered thereby, and also the personal obligation of its Owner, his heirs, and his or its successors and/or assigns. The personal obligation of any Owner to pay such Assessment, however, shall remain his or its personal obligation and shall not pass to any successors or assigns unless expressly assumed by them.

(b) If any Assessment is not paid within thirty (30) days after the delinquency date, the Assessment shall bear interest from the date of delinquency at eight percent (8%) per annum, and the Association may bring an action against the Owner personally obligated to pay the same and/or commence the foreclosure of the aforesaid lien against the Lot in like manner as a foreclosure of a mortgage on real property under the laws of the State of Alabama, and there shall be added to the amount of such Assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include the aforesaid interest on the Assessment as above provided and reasonable attorneys' fees to be fixed by the court, together with the costs of the action. The lien granted to the Association shall further secure such advances for taxes and payments on account of superior mortgages, liens or encumbrances which may be required to be advanced by the Association in order to preserve and protect its lien. Any person (except an Institutional Mortgagee) who shall acquire, by whatever means, any interest in the ownership of any Lot, or who may be given or acquire a mortgage, lien or other encumbrance thereon, is hereby placed on notice of the lien granted to the Association and shall acquire his interest in any Lot expressly subject to any such lien of the Association.

(c) The lien herein granted to the Association shall be perfected by recording a Claim of Lien in the Office of the Judge of Probate of Shelby County, Alabama, stating the description of the Lot encumbered thereby, the name of its Owner, the amount due and the date when due. The lien shall continue in effect until all sums secured by it, as herein provided, shall

have been fully paid. Such Claim of Lien shall include only Assessments which are due and payable when the Claim of Lien is recorded, plus interest, late charges, costs, attorneys' fees and advances to pay taxes, prior encumbrances and other proper charges together with interest thereon, all as provided herein. Such Claim of Lien shall be signed and verified by an officer or agent of the Association. Upon full payment of all sums secured by such Claim of Lien, the same shall be satisfied of record. No sale or other transfer of a Lot shall relieve any Owner from liability for any Assessment due before such sale or transfer, nor from the lien of any such Assessment. The written opinion of an officer of the Association that any lien is subordinate to any given mortgage shall be deemed to be dispositive of that issue.

(d) The lien of any Assessments shall be subordinate to the lien of any Institutional Mortgagee bearing a recording date in the Office of the Judge of Probate of Shelby County, Alabama, prior to the date of recording the Association's Claim of Lien. Where an Institutional Mortgagee obtains title to a Lot as a result of foreclosure of its mortgage or where any Institutional Mortgagee or its designee accepts a deed to a Lot in lieu of foreclosure, such acquiror of title, its successors and assigns, shall not be liable for any Assessment pertaining to such Lot or chargeable to the former Owner which became due prior to the acquisition of title to such Lot, unless such delinquent Assessment was secured by a Claim of Lien recorded prior to the recordation of the Institutional Mortgagee's mortgage. Such unpaid Assessments shall be instead collectible from all Owners, including such acquiror, its successors and assigns. Nothing herein contained shall be construed as releasing the party liable for such delinquent assessments from the payment thereof or liability for the enforcement or collection thereof by means other than foreclosure.

(e) Any person who acquires an interest in a Lot, except an Institutional Mortgagee as specifically provided above, including, but not limited to, persons acquiring title by operation of law or at a judicial sale, shall not be entitled to occupancy of the Lot or the use or enjoyment of the Common Areas until such time as all unpaid Assessments due and owing by the former Owner have been paid in full. Any party who has a contract to purchase a Lot, or who proposes to make a loan secured by a mortgage on a Lot, may, by written request, inquire of the Association whether the Lot is subject to any Assessments and the due date of any such Assessments and the amount of interest due on any delinquent Assessments and an authorized representative of such Association shall give the requesting party a written response, providing all such information, within ten days of the Association's receipt of such inquiry and such response shall be binding upon the Association. If the response is incorrect or if the Association does not make such response

within said ten-day period, any such assessment shall not be an obligation of such purchaser or a lien on the Lot, but shall continue to be a personal obligation of the Owner of the Lot.

(f) The Association shall have the right to assign its Claim of Lien, and any other lien rights provided for in this Article, for the recovery of any unpaid Assessments to the Developer, to any Owner or group of Owners or to any third party.

4.11 Exempt Property. The Board of Directors shall have the right to exempt any portion of the Property from the assessments, charge and lien created herein provided that such part of the Property exempted is used (and as long as it is used) for any of the following purposes:

(a) As an easement or other interest therein dedicated and accepted by the local public authority and devoted to public use;

(b) As Common Area as defined in Section 1.02 hereof;

(c) As Property exempted from ad valorem taxation by the laws of the State of Alabama, to the extent agreed to by the Association.

ARTICLE V

COMMON EXPENSES

The following are certain expenses with respect to the Common Areas which are hereby declared to be Common Expenses which the Association is obligated to collect by Assessment and which Owners are obligated to pay as provided in Article IV hereof. The enumeration below of these expenses shall in no way limit the Association from considering other expenses incurred in managing the Association or any part of the Common Areas and/or the Property as expenses subject to collection by Assessment.

5.01 Maintenance and Repair of Common Areas. The cost and expense to keep and maintain the Common Areas in good and substantial repair and in a clean, attractive, and sanitary condition.

5.02 Management. The cost and expense of such (i) employees or agents, including professional management agents, accountants and attorneys, and (ii) materials, supplies and equipment as may be needed to provide for the management, supervision and maintenance of the Common Areas.

5.03 Fidelity and Directors' Insurance. Fidelity and Directors' Insurance covering all directors, officers and employees of the Association and all managing agents who handle Association funds, if any.

5.04 Enforcement of Declaration and Rules and Regulations. All fees, costs and expenses, including attorneys' fees through all appellate levels, in connection with the Association's duty to enforce all of the Protective Covenants and other terms contained in or imposed by this Declaration, and all rules and regulations adopted pursuant to the Articles, the By-Laws or this Declaration.

ARTICLE VI

ARCHITECTURAL CONTROL

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6.01 Necessity of Architectural Review and Approval. No improvement or structure of any kind, including, without limitation, any building, fence, wall, sign, lighting system, site paving, grading, parking lot, screen enclosure, sewer, drain, disposal system, decorative building, satellite dish, landscaping, landscape device or object, shall be commenced, erected, placed or maintained upon the Property, nor shall any addition, change or alteration therein, thereof or thereto be made, nor any subdivision platting or replatting of the Property be made, unless and until the plans and specifications, showing the color, nature, kind, shape, materials and location of the same, shall have been submitted to and approved in writing by, the Association. All plans and specifications shall be evaluated as to harmony of external design and location in relation to surrounding structures and topography.

6.02 Architectural Review Board.

(a) The architectural review and control functions of the Association shall be administered and performed by the Architectural Review Board (hereinafter referred to as the "ARB"), which shall consist of not more than three (3) members who may or may not be members of the Association. So long as the Developer owns any Lots within the Property, at least one member of the ARB shall be designated by the Developer. So long as NCNB owns any property within the NCNB Property, at least one member of the ARB shall be designated by NCNB. The ARB shall initially be comprised of Billy D. Eddleman, Michael Fuller, and Floyd T. Boyce who shall serve until their death or resignation or until their successors are elected as herein provided.