

2375

BROOK HIGHLAND COMMON PROPERTY
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS

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STATE OF ALABAMA

COUNTY OF SHELBY

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (the "Declaration") is made as of the 29th day of August, 1989, by AMSOUTH BANK N.A., AS ANCILLARY TRUSTEE FOR NCNB NATIONAL BANK OF NORTH CAROLINA, AS TRUSTEE FOR THE PUBLIC EMPLOYEES RETIREMENT SYSTEM OF OHIO (hereinafter referred to as "Declarant");

W I T N E S S E T H:

Declarant, for the use and benefit of itself, its successors and assigns, does hereby declare, encumber, place and impose upon those certain parcels of real property hereinafter described (the "Properties"), the following conditions, covenants, reservations, easements and restrictions to insure the proper use, appropriate development and improvement of such Properties; to enhance the value, desirability and attractiveness of the Properties; to protect against the construction of improvements and structures built of improper or unsuitable materials; to insure compliance with all applicable zoning ordinances, building codes and environmental laws and regulations; to provide for a method for the maintenance and continued improvement of certain common areas and facilities appurtenant to the Properties; and to otherwise provide for the construction and development of first quality improvements on the Properties. This Declaration is intended to compliment and supplement local governmental laws and regulations and in the event of a conflict occurring between the provisions of this Declaration and such laws and regulations, the most rigid requirements shall control. Furthermore, Declarant has deemed it desirable for the establishment and enforcement of uniform standards of development quality and the effective presentation 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 covenants, conditions and restrictions contained herein and of levying, collecting and depositing such charges and assessments as may be authorized in this Declaration for that purpose. Accordingly, Declarant has incorporated the Association under the laws of the State of Alabama, as a nonprofit corporation, for the purpose of exercising the aforesaid functions.

THEREFORE, in consideration of the premises and of the mutual benefits and duties herein contained, Declarant hereby declares that those certain parcels of real property (i.e., the "Properties") hereinafter described shall be held, sold and conveyed subject to the following covenants, reservations, easements, conditions and restrictions, all of which are for the purpose of protecting the value and desirability of, and which shall run with the Properties and shall be binding on all parties having a right, title or interest therein, along with their heirs, successors and

assigns, and which shall inure to the benefit of each owner thereof.

ARTICLE I

Definitions

Section 1. Definitions.

(a) "Association" shall mean and refer to the Brook Highland Common Property Association, Inc., its successors and assigns, an Alabama not-for-profit corporation.

(b) "Common Property", for the purposes of and as applicable to a Lot or Lots which are located within Zone 1, and with regards to such Zone 1 Owners, shall mean and refer to all real property designated as such by Declarant and/or owned, now and/or in the future, by the Association for the common use and enjoyment of all the Owners, including, any related equipment, fixtures, apparatus and personal property and being more particularly described in Section 1 of Article III and Section 2 of Article VI hereof, and which is located within Zone 1; "Common Property", for the purposes of and as applicable to a Lot or Lots which are located within Zone 2, and with regards to such Zone 2 Owners, shall mean and refer to all real property designated as such by Declarant and/or owned, now and/or in the future, by the Association for the common use and enjoyment of all the Owners, including, any related equipment, fixtures, apparatus and personal property and being more particularly described in Section 1 of Article III and Section 2 of Article VI hereof, and which is located within Zone 2; "Common Property", for the purposes of and as applicable to a Lot or Lots which are located within Zone 3, and with regards to such Zone 3 Owners, shall mean and refer to all real property designated as such by Declarant and/or owned, now and/or in the future, by the Association for the common use and enjoyment of all the Owners, including, any related equipment, fixtures, apparatus and personal property and being more particularly described in Section 1 of Article III and Section 2 of Article VI hereof, and which is located within Zone 3.

(c) "Declarant" shall mean and refer to AmSouth Bank N.A., as Ancillary Trustee for NCNB National Bank of North Carolina, as Trustee for the Public Employees Retirement System of Ohio, and shall include the successor in interest to AmSouth Bank N.A. acting in such capacity.

(d) "Deed" shall mean and refer to any deed, lease, assignment or other instrument other than a Mortgage conveying any interest in any Lot.

(e) "Leasehold Owner" shall mean and refer to the lessee under any lease of a Lot with an initial term of not less than twenty (20) years.

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(f) "Lot" (or "Lots") shall mean and refer to any lot (or lots), parcel (or parcels) or tract (or tracts) of land subdivided out of the Properties by Declarant and either conveyed to another person or entity or specifically identified by Declarant in an amendment to this Declaration or a map of the Properties, but excluding any "Common Property."

(g) "Member" shall mean and refer to those persons or entities entitled to membership in the Association.

(h) "Mortgage" shall mean and refer to a mortgage, deed of trust, deed to secure debt or other security instrument affecting a Lot or Lots and which has been recorded in the Office of Judge of Probate for Shelby County, Alabama.

(i) "Mortgagee" shall mean and refer to the mortgagee, beneficiary, trustee or other holder of a Mortgage.

(j) "NCNB" shall mean and refer to NCNB National Bank of North Carolina, as Trustee for the Public Employees Retirement System of Ohio.

(k) "Occupant" shall mean and include the Owner or Leasehold Owner of any Lot and their respective employees, agents, tenants, independent contractors, invitees and licensees or any other such person who either lawfully or unlawfully occupies or comes upon such Lot. All actions or omissions of any Occupant is and shall be deemed the action or omission of the Owner or Leasehold Owner of such Lot.

(l) "Owner" shall mean and refer to the record owner (including Declarant), whether one or more persons or entities, of the fee simple title to any Lot, or any portion thereof, which is a part of the Properties; but such term shall not include a Mortgagee. An Owner (including the Declarant) who has transferred or otherwise conveyed a leasehold interest in and to any Lot to a Leasehold Owner may, in its sole discretion, assign in such Lease, all of such Owner's rights and obligations as an Owner herein; provided, however, that any such assignment shall not relieve such Owner from his duties and obligations hereunder except as expressly provided herein. From and after receipt of notice of such assignment, the Declarant shall recognize the Leasehold Owner as the Owner of such Lot.

(m) "Properties" shall mean and refer to the real property described in Exhibit A attached hereto and incorporated herein by reference, along with any additional real property subjected to this Declaration as herein provided.

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(n) "Street" shall mean any street, highway or other thoroughfare, whether public or private, within the Properties and established, through dedication, easement or otherwise, by Declarant regardless of whether same is designated as a street, boulevard, place, drive, road, terrace, way, lane, circle or otherwise.

(o) "Structure" shall mean and refer to any thing or device the placement of which upon or within any Lot might affect the physical appearance thereof, including, by way of illustration and not limitation, improvements, buildings, sheds, foundations, covered areas, patios, driveways, fountains, pools, parking areas, trees, shrubbery, paving, curbing, landscaping, screening, above-ground irrigation systems or devices, fences or walls or any sign or sign board, and any other artificial or man-made changes or alterations to the natural environment of any Lot as such Lot is presently situated as of the date of this Declaration. "Structure" shall also mean any excavation or fill, the volume of which exceeds ten (10) cubic yards; or any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters upon or across any Lot.

(p) "Watershed Covenants" shall mean and refer to those certain covenants, conditions and restrictions set forth in that certain Declaration of Protective Covenants dated July 11, 1988 and recorded in Book 194 at Page 54 in the Office of Probate for Shelby County, Alabama relating to the implementation and maintenance of that certain Soil Erosion Control Plan and Storm Water Management System for certain real property, including without limitation the Properties, located within the Lake Purdy-Cahaba River Watershed.

(q) "Zone 1" shall mean that portion of the Properties which is designated Zone 1 on Exhibit B, attached hereto and made a part hereof.

(r) "Zone 2" shall mean that portion of the Properties which is designated as Zone 2 on Exhibit B.

(s) "Zone 3" shall mean that portion of the Properties which is designated as Zone 3 on Exhibit B.

(t) "Zone 1 Leasehold Owner" shall mean a Leasehold Owner of any Lot or portion thereof which lies within Zone 1.

(u) "Zone 2 Leasehold Owner" shall mean a Leasehold Owner of any Lot or portion thereof which lies within Zone 2.

(v) "Zone 3 Leasehold Owner" shall mean a Leasehold Owner of any Lot or portion thereof which lies within Zone 3.

(w) "Zone 1 Owner" shall mean an Owner of any Lot or portion thereof which lies within Zone 1.

(x) "Zone 2 Owner" shall mean an Owner of any Lot or portion thereof which lies within Zone 2.

(y) "Zone 3 Owner" shall mean any Owner of any Lot or portion thereof which lies within Zone 3.

ARTICLE II

Properties

Section 1. Description. The real property which presently is and shall be held, transferred, sold, conveyed, encumbered, leased and occupied subject to this Declaration is described in Exhibit A attached hereto (the "Properties").

Section 2. Additions to Properties. Additional real estate may be subjected to this Declaration by Declarant upon the filing of record of Supplementary Declarations describing same in the Office of the Judge of Probate of Shelby County, Alabama, and thereupon the operation and effect of this Declaration shall be extended to such additional property and such additional property shall thereafter be and become part of the Properties. The Supplementary Declarations may contain such additions and modifications of this Declaration as pertain to such additional properties as may be necessary or convenient, in the judgment of Declarant, to reflect the different character, if any, of the added properties, including without limitation such additions and modifications, providing for separate covenants and restrictions and permitting alternative permitted uses (including without limitation use of such additional property for retail, commercial, office or residential purposes) which may be in addition to or in lieu of those covenants and restrictions set forth herein. Furthermore, upon additional real estate being subjected to this Declaration, the boundaries of one or more of the Zones shall be expanded or otherwise changed by Declarant at the discretion of Declarant so as to include such additional real estate in one or more of Zone 1, Zone 2, Zone 3 and Exhibit B shall be modified at such time to reflect the same.

Section 3. Right of Declarant to Modify Restrictions with Respect to Lots Owned by Declarant. With respect to any Lot owned by Declarant, Declarant may, by deed, contract or other instrument filed for record in the manner specified herein, modify the provisions of this Declaration as the same apply to any such Lots; provided, however, that this Declaration may not be modified or amended to (a) increase or decrease the voting rights attributable to such Lot in the Association except with respect to such increases or decreases resulting from the addition or deletion of certain tracts or parcels to or from the Properties as provided herein; (b) exempt any Lot from the payment of assessments; or (c) modify the provisions of Section 1 of Article VIII hereof to permit the use of any such Lot for the prohibited uses set forth therein.

Section 4. Mutuality of Benefit and Obligation. The provisions of this Declaration and any amendments hereto are made (a) for the mutual and reciprocal benefit of each Lot and are intended to create mutual, equitable servitudes upon and in favor of each Lot, (b) to create reciprocal rights and obligations between the respective Owners and all future and subsequent Owners of any Lot and (c) to create a privity of contract and estate between the Owners, their respective heirs, successors and assigns.

Section 5. Platting and Subdivision of the Properties. Declarant shall be entitled at any time and from time to time, to subdivide, plat and/or re-plat all or any part of the Properties, and to file subdivision restrictions and/or amendments thereto with respect to any undeveloped portion or portions of the Properties owned by Declarant.

ARTICLE III

Common Property

Section 1. Title. The Common Property shall be such as is shown from time to time on the Declarant's survey maps of the Properties and may include entrances, medians, streets and all drainage facilities, lakes, ponds, retention ponds, streams and dams, greenways, jogging trails, recreational areas and other lands, other than the Lots, but shall not include such areas to the extent the same are maintained on a regular basis by any governmental body in good order and repair. Declarant agrees to convey the Common Property to the Association on or before the time of termination of the Class B membership as described in Article IV below.

Section 2. Owners' Rights. Every Owner shall have a non-exclusive, perpetual right and easement of enjoyment in and to the Common Property which shall be appurtenant to this Declaration, the bylaws, rules and regulations adopted from time to time by the Association and title to each Lot.

ARTICLE IV

Membership

Section 1. Members. Every person or entity who is an Owner or Leasehold Owner of any Lot which is included in the Properties shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot; provided, however, that (a) Declarant shall be deemed a Member of the Association and shall have the voting rights set forth in Article V below, (b) in the event any Lot is owned by or leased to more than one (1) person, then the Owners of such Lot shall, by written notice to the Association, designate only one (1) representative to serve as a Member of the Association (whose acts or omissions shall be binding upon such Owner) and (c) no Mortgagee

shall become a Member of the Association until such time, if at all, that the Mortgagee becomes an Owner by virtue of (i) foreclosure of its Mortgage, (ii) title to such encumbered Lot is vested in Mortgagee pursuant to a duly recorded Deed and (iii) notice of such foreclosure and transfer of title has been given by such Mortgagee to the Association. Subject to the provisions of Sections 1(1) of Article I hereof, the transfer by any Owner of title to any Lot by Deed, other than a transfer by a Mortgage or as security for the payment of an obligation, shall include the transfer of all membership rights of such Owner in the Association. Each Member of the Association shall at all times comply with the provisions of this Declaration, the Articles of Incorporation, the Bylaws and all rules and regulations which may from time to time be adopted by the Association.

Section 2. Classes of Membership. The Association shall have two classes of membership:

(a) Class A. Class A Members shall be all Owners, except for Declarant prior to termination of its Class B membership. If, however, Declarant owns one or more Lots upon or after the termination of its Class B membership, then Declarant shall become a Class A Member.

(b) Class B. The Class B membership shall be the Declarant, its successors or assigns. The Class B membership shall terminate and cease upon the first to occur of the following: (i) the time at which the final Plans for the initial development of the last Lot in the Properties has been approved by the Declarant; (ii) such time as Declarant has conveyed all of its interest in the Properties; (iii) December 31, 2005; or (iv) voluntary termination by Declarant.

ARTICLE V

Voting

Section 1. Class A. Except for matters concerning special assessments and amendments to this Declaration, Class A Members shall not be entitled to vote until the termination of the Class B membership, at which time Class A Members shall be entitled to one vote for each acre owned in the Properties plus a fractional (hundredths) vote for each fractional (hundredths) acre thereof. The vote for any one Lot owned by more than one person or entity shall be exercised as they among themselves shall determine, but in no event shall the vote or votes with respect to any jointly owned Lot be cast separately, but rather such vote or votes shall be cast by the representative designated by such Owners by written notice to the Association.

Section 2. Class B. Except for special assessments and amendment to this Declaration, the Class B Member (i.e., the

Declarant) shall be the only Member entitled to vote in the Association until such time as the Class B membership shall cease.

Section 3. Special Assessments and Amendments. On all matters concerning a special assessment relating to the Common Property or an amendment to this Declaration, the voting shall, prior to termination of the Class B membership, be as follows:

(a) Class A. The Class A membership shall have one vote for each acre owned in the Properties in each Zone, if any, and a fractional vote for each fractional acre.

(b) Class B. The Class B Member shall have one vote for each acre owned in the Properties in each Zone, if any, and a fractional vote for each fractional acre.

Each fractional acre shall be calculated to the nearest one one-hundredth (1/100th) of an acre.

Section 4. Exclusion of Designated Common Property. Designated Common Property shall be excluded for purposes of computation of voting rights.

ARTICLE VI

Assessments

Section 1. Creation of Lien and Personal Obligation of Assessments. Each Owner of any Lot shall, by acceptance of a conveyance therefor, whether or not it shall be so expressed in any conveyance, be deemed to covenant and agree to all the terms and provisions of this Declaration and promises to pay to the Association both annual and special assessments and charges, such as are established and to be collected from time to time as hereinafter provided. No Owner may exempt himself or itself from any liability for any such assessment levied against his or its Lot by waiver of the use or enjoyment of any of the Common Property, or by abandonment of the Lot or in any other manner. The annual and special assessments and charges, together with such interest thereon and costs of collection therefor as are hereinafter provided, shall be a charge and continuing lien upon the Lot against which such assessment is made as of the effective date of each assessment. Each such assessment, together with such interest thereon and costs of collection therefor as are hereinafter provided, shall also be the personal obligation of the person or entity who was Owner of such Lot at the time when the assessment became due. In the case of co-ownership of a Lot, all of such co-owners shall be jointly and severally liable for the entire amount of the assessment.

Section 2. Purpose of Annual Assessments. The annual assessments levied by the Association shall be used for the improvement, maintenance, operation, repair, replacement and additions of and to the Common Property, including, but not limited

to, the payment of taxes thereon, the payment of all insurance premiums paid by or for the Association for public liability, fire and extended coverage, officers and directors liability and all other insurance which may from time to time be maintained by the Association, attorneys' and accountants' fees incurred by the Association, the payment of utilities charges related thereto (including water for any sprinkler systems), maintaining, operating, repairing and improving Streets, roads, drives and rights-of-way, the payment of license, permit and inspecting fees, preparing and resurfacing costs, street signs, and markers and other Common Property facilities and amenities, collection and disposal of garbage, rubbish and the like, employing security service, maintenance personnel, for the establishment of reasonable reserves for capital expenditures by the Declarant or the Association and for the cost of labor, equipment, materials, management and supervision thereof. Such Assessments will be levied by the Association per Zone - i.e. the assessments levied against Zone 1 Owners shall be used only for the improvement, maintenance, operation, repair, replacement and additions of and to the Common Property located within Zone 1. The assessments levied against Zone 2 Owners shall be used only for the improvement, maintenance, operation, repair, replacement and additions of and to the Common Property located within Zone 2. The assessments levied against Zone 3 Owners shall be used only for the improvement, maintenance, operation, repair, replacement and additions of and to the Common Property located within Zone 3. A lot located entirely within one Zone shall only be subject to assessments with regards to the Common Property within that Zone Property. A Lot located in two (2) or more Zones shall have only the portion of that Lot within one Zone subject to assessments with regards to Common Property in that Zone, and the other portion of the Lot shall be subject to assessments with regards to the Common Property in that other Zone or Zones. Separate accounts will be maintained by the Association for each Zone. The annual assessments may also be used for the payment of any and all assessments levied upon the Association pursuant to and in the manner set forth in the Watershed Covenants without regard to any Zone designation herein. Said assessments shall include with respect to the Watershed Covenants that portion of the Fund (as defined in the Watershed Covenants) allocated to the respective Lots on a pro-rata acreage basis, said assessments for the Fund allocated to the Lots shall be paid by the respective Owners to the Association within fifteen (15) days of receipt by Grantee of notice from the Association of the amount of such assessment. The Common Property may include such facilities and amenities as Streets, drives and other rights-of-way, flower beds, planted islands, nature, jogging and other trails or walks, clubhouses (or similar improvements), swimming pools, tennis courts, medians, ponds, dams, entrances, greenways, recreational areas, drainage areas, water amenities, sculptures, transportation stops and/or shelters, directional and informational signage, tree nurseries and maintenance areas and, at the option of the Association, certain portions of the Properties as are described in Section 13 of Article X below. Notwithstanding anything to the contrary, nothing

herein shall obligate Declarant or the Association to build all or any portion of the facilities and amenities listed above as possible Common Property facilities and amenities. In addition, the Association may use annual assessments for the purpose of doing any other things necessary or desirable, in the discretion of the Association, to keep Common Property facilities and amenities in neat and good order and to provide for the health, welfare and safety of the Owners and Occupants of the Properties and the Common Property facilities and amenities. By its acceptance of any conveyance to any Lot, each Owner acknowledges that the precise acreage, dimensions, type of amenities, improvements and structures to be located within the Common Property has not been (and may not be) specifically defined until the sale of the last Lot within the Properties. Notwithstanding the lack of specificity relating to the size and development of the Common Property, each Owner acknowledges that it is a knowledgeable business person familiar with developments such as the one established under this Declaration and hereby agrees to accept and pay annual and special assessments levied by the Association pursuant to this Declaration. Further, each Owner agrees to accept such Common Property as may be designated and/or conveyed by the Declarant, provided that said Common Property shall be located within the bounds of the Properties.

Declarant has formulated a general plan of development and use for the Properties which may have previously been submitted to and reviewed by some or all of the Owners in the form of map or other devices relating to design information. Notwithstanding anything to the contrary, said maps or potential design information will not necessarily conform to the ultimate development of the Properties, including the facilities and amenities to be located within the Common Property and the amount of land to be devoted for said purposes.

The Association shall not be obligated to spend in any calendar year all sums collected and may carry forward into subsequent years as surplus any balances remaining. The Association shall not be entitled to borrow money.

Section 3. Allocation of Annual Assessments. Subject to the provisions of Section 4 of this Article VI set forth below, the annual assessments made by the Association herein and allocated to each Lot hereunder shall be allocated according to Zone in accordance with the provisions in Article VI, Section 3 above, and shall be based upon the percentage interests attributable to each such Lot constituting any portion of that certain Zone (including any such Lot owned by Declarant) which shall be determined by the Declarant or the Association by dividing the land acreage of a given Lot (exclusive of the Common Property within said Zone and any areas within road rights-of-way which have been dedicated to the public and accepted by applicable governmental authorities within said Zone) by the total land acreage of the Properties located in that certain Zone (exclusive of the Common Property within said Zone and any areas within road rights-of-way which have

been dedicated to the public and accepted by applicable governmental authorities within said Zone), said land acreage to be calculated to nearest one-one-hundredth (1/100th) of an acre. In addition, the Association may adopt a budget for a reserve for various Common Property capital or extraordinary maintenance items and each Owner's annual share thereof shall be computed in the manner set forth above.

Section 4. [Purposely Deleted]

Section 5. Special Assessments. In addition to the annual assessments hereinabove authorized, the Association may levy special assessments for the purpose of (i) defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Common Property, including the necessary fixtures and personal property related thereto, (any such special assessments will be levied on Lots in a Zone only in the event such construction, reconstruction, repair or replacement is made to Common Property within said Zone); and (ii) the payment of any and all assessments levied upon the Association pursuant to and in the manner set forth in the Watershed Covenants.

The Association will adopt and promulgate maintenance standards and guidelines with respect to the landscaping and natural terrain located within the boundaries of each Lot. At a minimum, each Owner is required to maintain its Lot to a standard of quality at least equal to that standard observed by the Association in maintaining the Common Property. In the event any Lot Owner fails to observe required maintenance standards with respect to any Lot, the Association shall provide written notice thereof to the Owner, and the Owner shall have a period of thirty (30) days after receipt of such written notice within which to commence in a reasonable and expeditious fashion the correction of such maintenance deficiencies. If said deficiencies are not corrected within a reasonable period of time, the Association reserves the right to enter upon the Lot, correct the deficiencies and charge or assess the appropriate Owner for the costs thereof. The Owner shall pay said charges within ten (10) days after the date of the Association's statement to the Owner for the costs of correcting said deficiencies.

Section 6. Commencement. Assessments shall commence on the date fixed by the Association, but not prior to January 1, 1990, or upon purchase of a Lot from Declarant, whichever later occurs. Assessments on Lots that first become subject to assessments during a calendar year shall be prorated on a calendar year basis for the remainder of such calendar year.

Section 7. Due Date. Unless otherwise provided herein, assessments shall be due and payable in full within thirty (30) days after billed to an Owner by the Association.

Section 8. Records of Assessments. The Association shall cause to be maintained in the office of the Association a record

of all Lots and assessments applicable thereto which shall be open to inspection by any Owner. Written notice of each assessment shall be mailed to every Owner of the Lot subject to assessment.

The Association shall upon demand and payment of a reasonable charge, furnish to any Owner a certificate in writing signed by an officer of the Association setting forth whether the assessments against the Owner's Lot have been paid and, if not, the amount due and owing. Such certificates shall be conclusive as evidence for third parties as to the status of assessments against such Lot.

Section 9. Effect of Non-Payment of Assessment. If any assessment is not paid on the date when due, then such assessment shall be delinquent and shall accrue interest thereon at the "prime rate" of interest announced from time to time by NNCB National Bank of North Carolina plus five percent (5%) per annum (such rate to change from time to time as the prime rate changes), unless a lesser rate is required under applicable law, in which event the lesser rate shall become applicable. If such assessment is not paid within ten (10) days after the due date, then the Association may bring an action at law against the Owner personally and/or foreclose the lien against the Lot, and there shall be added to the amount of such assessment all reasonable attorneys' fees and costs incurred by the Association in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as indicated above.

Each Owner, by acceptance of a Deed to a Lot, hereby expressly vests in the Association or their agents the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien in the same manner and by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in the same manner as a Mortgage may be foreclosed pursuant to the laws of the State of Alabama, and each Owner hereby expressly grants to the Association a power of sale in connection with said lien. The lien provided for in this Article VI shall be in favor of the Association and shall be for the benefit of the Association and all other Lots and the Owners thereof within the same Zone as the Lot which is liened is located. The Association, acting on behalf of the Owners with the same Zone as the Lot which is liened is located, may hold, lease, mortgage and convey the Lot foreclosed.

Section 10. Binding Nature of Lien. Any person or entity 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 Property until such time as all unpaid assessments due and owing by the former Owner have been paid in full.

ARTICLE VII

Declarant's Obligations for Assessments and Maintenance

Section 1. Limited Exemption. Declarant and all property owned by Declarant shall be exempt from all assessments and the liens therefor of every type, except as otherwise set forth herein including without limitation the provisions of Section 3 of Article VI and Section 2 of Article VII.

Section 2. Contribution by Declarant. Notwithstanding the foregoing, Declarant agrees to (a) be responsible for the payment of any and all assessments levied pursuant to the Watershed Covenants which are the responsibility of the Declarant as an Owner hereunder or under the Watershed Covenants, (b) be responsible for the payment of any and all assessments levied pursuant to Section 3 of Article VI hereof which are the responsibility of the Declarant as an Owner hereunder and (c) in addition to the above, contribute to the Association such funds as may be required to maintain the Common Property, to the extent the maximum annual assessments together with Declarant's contributions as an Owner hereunder are insufficient to pay the cost thereof, through the year 1993 or until voluntary termination of Class B membership, whichever first occurs; provided, however, the Association and not the Declarant, shall be responsible for the payment of that portion of the assessments used for the payment of any and all assessments levied upon the Association pursuant to and in the manner set forth in the Watershed Covenants. After the year 1993 or upon termination of the Class B membership, whichever first occurs, Declarant shall pay assessments, only if, and to the extent which, it is a Class A Member of the Association, including without limitation the payment of its prorated portion of the assessments used for the payment of any and all assessments levied upon the Association pursuant to and in the manner set forth in the Watershed Covenants.

ARTICLE VIII

Prohibited Uses and Miscellaneous Restrictions

Section 1. Prohibited Uses. (a) In no event shall any portion of the Properties be used for the following purposes; labor camps, commercial storage of building or construction materials (except in connection with construction of structures by Owners of Lots as is provided herein), smelting of iron, tin, zinc or other ores, refining of petroleum or of its products; community fairs, taxidermy, drive-in theatres, cemeteries (public and private), commercial poultry, livestock and swine production, cattle feeder lots or fur-bearing animal rearing or breeding farms; animal kennels, abattoirs, junk yards, bailing, storage or processing of scrap metal, glass, paper or rags, or storage or processing of wrecked or junked motor vehicles; quarries, race tracks, raceways or dragstrips; sanitary land fills or garbage disposal areas; trailer or mobile home parks; "mini-warehouses"; any business, the

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operation of which would result in the generation, storage or disposal of any "hazardous material" including but not limited to (i) any asbestos or insulation or other material composed of or containing asbestos or (ii) any hazardous, toxic or dangerous waste, substance, or material defined as such in (or for the purposes of) the Comprehensive Environmental Response Compensation and Liability Act, as amended, 42 U.S.C. 9061 et seq., The Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., the Clean Air Act, 42 U.S.C. § 6901 et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., the Clean Water Act, 33 U.S.C. § 1251 et seq., the Refuse Act, 33 U.S.C. § 401, et seq., the Toxic Substances Control Act, 15 U.S.C. 2601, et seq., and the Safe Drinking Water Act, 15 U.S.C. 2601, et seq., any so-called state or local "Superfund" or "Superlien" law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability, or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, including radioactive materials as now or at any time hereinafter in effect ("Environmental Regulation"); provided, however, a use resulting in the generation, storage or disposal of such hazardous, toxic or dangerous waste, substance, or material shall not be prohibited on the Properties (i) so long as Declarant shall own any portion of the Properties, such use is permitted in writing by Declarant, (ii) such use is lawful and is not otherwise prohibited by any applicable Environmental Regulation and (iii) such use does not cause actual damage or create an imminent and probable threat of damage to persons or property; provided, further, even if such use is permitted, any storage of such substances within the Properties shall not involve bulk storage and shall only be permitted if such storage is an incidental use, interior and above ground storage and is otherwise in compliance with all applicable laws and regulations; massage parlors or similar business operations or other unsightly, obnoxious or objectionable businesses which may produce and emit substantial gases, smokes, odors or noises that would be objectionable in a high quality, environmentally-controlled commercial development or would violate Section 5 of Article VIII.

(b) No operation or uses shall be permitted or maintained within or without the Improvements which causes or produces any of the following effects discernible outside the Improvements or affecting any adjacent property except during the period of construction of such Improvements: (i) Noise or sound that is unusual and inappropriate for the development proposed and to be constructed upon the Property and is objectionable because of its volume, duration, intermittent beat, frequency or shrillness; (ii) Noxious, toxic, or corrosive fumes or gases; (iii) Obnoxious odors; (iv) Dust, dirt or fly ash; or (v) Unusual fire or explosive hazards.

Section 2. Maintenance In Accordance with Watershed Covenants. The Properties shall at all times be maintained and developed in accordance with and subject to the terms and provi-

sions of the Watershed Covenants, which are hereby incorporated herein by reference.

Section 3. Rights of Inspection. Any agent of Declarant, its successors or assigns, or the Association may, at any reasonable time or times, enter upon and inspect any Lot and any improvements or structures thereon for the purpose of ascertaining whether the maintenance of such Lot and the maintenance, construction or alteration of improvements and structures thereon and the use or uses conducted thereon are in compliance with the provisions hereof; and neither Declarant, its successors or assigns, nor the Association, nor any such agent of either, shall be deemed to have committed a trespass or other wrongful act by reason of such entry inspection.

Section 4. Temporary Structures. No building or other structure of a temporary nature shall be allowed on any Lot at any time except that of an Owner's contractors and subcontractors during the period of construction or repair to Structures.

Section 5. Repair and Maintenance. The Properties shall at all times be developed and maintained in accordance with the terms and provisions of the Watershed Covenants. The Owner of each Lot shall repair, keep and maintain same up to the point of the curb line of adjacent streets, and shall repair, keep and maintain all parking lots, streets and Structures in a safe, clean, neat and sanitary condition, and shall comply in all respects with all governmental zoning, health, environmental, fire, and police requirements. Each Owner shall remove at his or its expense any rubbish of any character which may accumulate on his or its Lot. During construction of any Structures on any Lot, the Owner thereof shall keep any construction site free of unsightly accumulation of rubbish and scrap materials, and construction materials, trailers, shacks and the like employed in connection with such construction shall be kept in a neat and orderly manner at all times. Reference is hereby made to the requirements of Section 3 of Article VI above.

Section 6. Dirt, Dust and Waste Discharge. No use of the Properties will be permitted which emits dust, sweepings, dirt or cinders into the atmosphere or discharges liquid, solid wastes or other harmful matter into any stream, river, pond, lake or other body of water which, in the opinion of the Declarant or the Association, may adversely affect the health, safety, comfort of or intended property use by, persons within the area.

Section 7. Underground Utilities. No pipe, conduit, cable or transmission line for any utility services shall be installed or maintained above the surface of the ground of any Lot; provided, however, that street light standards, similar lighting equipment and temporary irrigation hoses, pipes and systems may be placed (and replaced) upon the surface of any Lot without the prior written approval of the Declarant or the Association, as applicable. No Owner or Occupant will erect or grant any right,

license or privilege to erect, use or permit the use of overhead or aboveground wires, poles, pipes or other aboveground machinery or equipment in connection with any utility services. Temporary poles and lines for the transmission of utility services during construction of any Structures may not be erected, placed, installed or maintained on any Lot without the prior written approval of the Declarant or the Association, as applicable.

Section 8. Parking and Roadways. No on-street parking or parking in the Common Property shall be permitted. Each Owner shall provide all street parking on its respective Lot in accordance with minimum parking requirements as may be required by the appropriate governmental authorities. All loading facilities and delivery areas for each Lot and Structures thereon shall be located and screened from street and driveway visibility in a manner approved by the Declarant. No materials, supplies, equipment or machinery shall be stored outside of a Structure or any Lot nor shall any outside operations of any nature be conducted on any Lot without the prior written approval of the Declarant. All automobiles, small trucks, motorcycles, mopeds and bicycles must be parked in a designated parking area on each Lot. No vehicles of any nature may be parked or left unattended for more than seven (7) consecutive days unless in the ordinary course of Owner's or Occupant's business. No vehicles of any nature which contain a for sale sign may be parked or left unattended for more than six (6) hours on any portion of the Properties.

Section 9. Miscellaneous Restrictions Respecting Access to Brook Highland Parkway and Brook Highland Drive. Notwithstanding anything to the contrary contained herein, no Lot shall have direct driveway access to Brook Highland Drive or Brook Highland Parkway except with respect to the main entrance road or driveway respecting each such Lot.

Section 10. Variances. The Declarant shall have the exclusive right to grant variances from the requirements of this Declaration with respect to any Lot, as the Declarant may, in its sole discretion, determine necessary for the successful development of the Properties. Any variance granted hereunder shall be effective only upon recordation in the Probate Office of Shelby County, Alabama of a Notice of Variance executed by the Architectural Review Committee and the affected Owner.

ARTICLE IX

General Provisions

Section 1. Duration; Modification or Termination. The terms and provisions of this Declaration shall be appurtenant to and run with the land and shall be binding upon all Owners, their heirs, successors and assigns, and all other parties hereinafter having an interest in any of the Properties and all parties claiming under them for a period of twenty-five (25) years from the date of filing this Declaration in the Office of the Judge of Probate for Shelby

County, Alabama. Thereafter, as then in force, this Declaration shall be continued automatically without further notice, and without limitation unless modified or terminated as hereinafter provided.

In addition to the rights of Declarant set forth herein, including without limitation Article II hereof, this Declaration may be modified by the recording of an agreement of modification executed by (i) the Declarant, unless Declarant no longer is an Owner; and (ii) the Owners of fifty-one percent (51%) of the acreage of the Properties in each Zone subject to this Declaration. For the purpose of determining if the necessary percentage has been obtained pursuant to this Section, the computation shall be based upon the total land area subject at that time to this Declaration within each Zone (including Properties owned by Declarant within each Zone) less land which has been dedicated to a public authority(ies) or designated and/or conveyed by Declarant as Common Property. Upon any modification as provided in this Section, this Declaration shall continue in full force and effect as so modified. For purposes of this Section, "Owner" shall not include any owner or holder of a reversionary interest in all or any portion of the Properties under lease with a term in excess of twenty (20) years. In any case where any Lot has more than one Owner, any one such Owner may execute any agreement of modification or termination pursuant to this Section and such execution shall be conclusive and binding with respect to all other persons having any interest in the Lot in question.

Section 2. Enforcement Powers. Any violation of this Declaration, whether in whole or in part, is hereby declared to be a nuisance and, without limitation, any party empowered to enforce this Declaration shall avail itself of all remedies available under applicable law for the abatement of a nuisance in addition to all other rights and remedies set forth hereunder or otherwise available at law. This Declaration may be enforced by Declarant, its successors and assigns (including, without limitation, the Association after the termination of Class B membership), by proceedings at law or in equity against the person, firm or other entity violating or attempting to violate any covenant or covenants, either to restrain the violation thereof or to recover damages together with reasonable attorneys' fees and court costs. Further, after the termination of Declarant's Class B membership in the Association, in the event the Association fails to act to enforce any covenant or restriction herein, any Owner of any Lot may enforce these restrictions as aforesaid against any other Owners. In addition to the remedy of enforcement as provided above, Declarant and the Association shall have the right, through their agents and employees, to enter upon the Lot and summarily abate, remove and extinguish any thing or condition that may exist thereon contrary to the provisions hereof and said parties shall not thereby be deemed to have trespassed upon such Lot and shall be subject to no liability to the Owner or occupant of such Lot for such entry, abatement or removal. The cost of any abatement or removal of violations authorized under this Declaration,

including allowances for overhead, shall be a binding, personal obligation of the Owner of the Lot upon which such violation has occurred as well as a lien (enforceable in the same manner as an assessment against a Lot) upon such Lot.

Section 3. Partial Invalidity. Any invalidation of any one or more of the restrictions set forth in this Declaration by judgment, court order, or statute or failure on the part of Declarant or its successors or assigns to enforce any of said restrictions shall in no way affect any of the other provisions hereof or be deemed a waiver of the right to enforce such restrictions any time after the violation thereof.

Section 4. Binding Effect; Waiver. Except as otherwise specifically provided herein, this Declaration shall bind and inure to the benefit of and be enforceable by the Declarant, the Association, their successors and assigns, and the Owner or Owners of any Lot, their respective heirs, successors and assigns. The failure of any person entitled to enforce this Declaration or any provision thereof shall not be deemed a waiver of the right of any such person to enforce the Declaration or any portion thereof thereafter. Waiver or any attempt of waiver of this Declaration with respect to any Lot shall not be deemed a waiver thereof as to any other Lot nor, with respect to the Lot in question, as to any subsequent violation, nor shall the violation of this Declaration with respect to any one Lot affect the applicability or enforceability of this Declaration with respect to any other Lots.

Section 5. Rights Assignable. Any and all 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's 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. The term "Declarant," as used herein, includes all such assignees and their heirs, successors and assigns. If at any time Declarant ceases to exist and has not made any such assignment, a successor Declarant may be appointed by the written consent of the Owners of fifty-one percent (51%) of the acreage of the Properties subject to this Declaration based upon the total number of acres subject to this Declaration, excluding designated Common Property. Any assignment or appointment made under this Section shall be in recordable form and shall be recorded in the Office of the Judge of Probate for Shelby County, Alabama.

Section 6. Mortgagees' Protection; Subordination of Liens. Violation of this Declaration shall not defeat or render invalid the lien of any Mortgage made in good faith and for value upon any portion of the Properties. Any lien created hereunder shall be junior and subordinate to any such Mortgage unless a suit to enforce the same shall have been filed in a court of competent

jurisdiction prior to the recordation of such Mortgage; provided, however, that any Mortgagee in actual possession or any purchaser at any trustee's, mortgagee's or foreclosure sale shall be bound by and be subject to this Declaration as fully as any other Owner of the Properties effective upon the date of acquisition.

Section 7. Chain of Title. Each grantee, lessee or other person in interest or occupancy accepting a conveyance, leasehold interest or other demise of an interest in or to or in connection with any Lot, whether or not the same incorporates or refers to this Declaration, covenants for himself, his heirs, successors and assigns to observe and perform and be bound by this Declaration and to incorporate this Declaration by reference in any conveyance or leasehold estate of all or any portion of his interest in any real property subject hereto.

Section 8. Ambiguities. If any discrepancy, conflict or ambiguity is found to exist with respect to any matters set forth in this Declaration, such ambiguity, conflict or discrepancy shall be resolved and determined by Declarant in its sole discretion. Declarant shall have the right to interpret the provisions of this Declaration and, in the absence of an adjudication by a court of competent jurisdiction to the contrary, its construction or interpretation shall be final and binding as to all persons or property benefited or bound by the provisions hereof. Any conflict between any construction or interpretation of Declarant and that of any other person or entity entitled to enforce any of the provisions hereof shall be resolved in favor of the construction or interpretation of Declarant.

Section 9. No Reversionary Interest. This Declaration shall not be construed as conditions subsequent, or creating a possibility of reverter, and no provision hereof shall be deemed to vest in the Declarant or any other persons any reversionary interest with respect to any Lot. Except as provided above, all reversionary rights are hereby expressly waived by Declarant.

Section 10. Zoning Requirements. This Declaration shall not be interpreted as permitting any action or thing prohibited by applicable zoning laws, or any laws, ordinances or regulations of any governmental authority or by specific restrictions imposed by any deed or other conveyance. In the event of any conflicts, the most restrictive provision shall be taken to govern and control.

Section 11. Exoneration of Declarant. Each Owner of any Lot in the Properties or any other party interested in the Properties expressly agrees that:

(a) No duty or obligation is imposed upon Declarant to enforce or attempt to enforce any of the covenants or restrictions contained herein, nor shall Declarant be subject to any liability of any kind or nature whatsoever from any third party as a result of failing to enforce same; and

(b) Declarant's approval of any construction, building or Structure, preliminary plans, plans, specifications, site or landscape plans or elevations or any other approvals or consents given by Declarant pursuant hereto or otherwise shall not be deemed a warranty, representation or covenant that any such Structures, buildings, improvements, landscaping or other action taken pursuant hereto or in reliance thereon complies with any or all applicable laws, rules, requirements or regulations, the sole responsibility for all of same being upon the Owner seeking approval; and Declarant, its successors and assigns, is expressly released and relieved of any and all liability and responsibility in connection therewith.

Section 12. Applicable to Properties. Nothing contained within these restrictions shall be held or construed to impose any restrictions, covenants or easements on any other land of the Declarant except for the land contained within the description of the Properties, unless specifically submitted and included within these restrictions by a Supplementary Declaration.

Section 13. Properties Easements Reserved; Maintenance Responsibilities; Easements Upon Certain Portions of the Lots Reserved; Optional Maintenance Thereof. There is reserved for the benefit of the Association an option of exclusive maintenance upon and over those certain strips or bands of property, of up to twenty feet (20') in width and over the Lot running contiguous and parallel with the margin of the right-of-way of any street contiguous with the Lot boundary. The Association may exercise its option of exclusive maintenance of said areas: (a) continually or from time-to-time and (b) with respect to all Lots or selected Lots, all as the Association may determine, and all expenditures incurred by the Association in connection with the exercise of such option shall be assessed by the Association either as annual or special assessments.

Section 14. Utilities Easements. There are reserved for the benefit of the Association and the Declarant non-exclusive easements and rights-of-way over, under, along and within strips of land located contiguous to and within the front, side and rear boundary lines of each Lot for the installation and maintenance of lines, conduits, pipes and other equipment necessary for furnishing electric power, gas, telephone service or other utility services including water, sanitary sewage and drainage facilities which shall be twenty feet (20') in width along the front boundary lines and along side and rear boundaries, unless said side and rear boundaries are common with other Lots, in which event said easements within the side and rear easements shall be ten feet (10') in width along the side and rear boundary lines of each Lot; provided, however, no above ground utilities equipment or conduits shall be installed or constructed within the Properties by Declarant or any Owner unless approved by the Association. The

reservation for easements shall not prevent the construction of driveways at locations approved by the Association over the portions of the Properties upon which the aforesaid easements are reserved, provided that applicable setback requirements are at all times satisfied.

Section 15. Easements for Benefit of Other Lands. The Association may hereafter grant and accept, and Declarant hereby reserves unto itself, its successors and assigns, easements and other rights for the benefit of the Properties and also for the benefit of other, adjacent land now or hereafter to be developed by Declarant, adjacent to, contiguous to or in the vicinity of the Properties, for the purpose of providing such benefits as shared facilities and amenities, reasonable access or pedestrian and vehicular traffic, open areas, green spaces, park lands and other suitable shared uses in, along and over any portion of the Common Property, provided, however, that the rights herein reserved by Declarant in, along or over the Common Property for the benefit of adjacent or other property shall not be available to the owner(s) of such adjacent or other land unless the owner(s) of such adjacent or other land shall agree to be bound to share with the Owners of Lots in the expenses of operation, maintenance, repair and replacement of the Common Property as are made available to the owner(s) of such land based upon the total number of acres which are or will be entitled to the use and benefit of the Common Property or by such other system designed to allocate ratably the costs and expenses for the maintenance and use of the Common Property, provided, further, that the obligations to be incurred in connection with the Common Property by such owner(s) of adjacent or other lands shall not accrue or be incurred or due until the date such parties are entitled to actual usage of the Common Property. Each Owner hereby grants to the Association and Declarant an irrevocable "durable" power of attorney (which, in the case of individuals, shall survive incompetency and in all cases is coupled with an interest) to execute, acknowledge and record for and in the name of each Owner such instruments as may be necessary to effectuate the foregoing.

Section 16. Standards for Review. Whenever in this Declaration Declarant or the Association has the right to approve, consent or require any action to be taken pursuant to the terms hereof, such approval, consent or required action shall, except as otherwise specifically provided herein, be in the sole and absolute discretion of Declarant or the Association respectively, and such approval, consent or required action shall be final and conclusive.

Section 17. Oral Statements. This Declaration and any amendments thereto shall be effective only if the same are made in writing and executed by all parties who are required under this Declaration to execute the same. Oral statements or representations of Declarant or the Association, their respective employees, agents and representatives shall not be binding on Declarant, or the Association and reliance on such oral statements or representations are hereby expressly disclaimed.

Section 18. Status of AmSouth Bank N.A. and NCNB. Notwithstanding anything contained herein to the contrary, AmSouth Bank N.A. hereby executes this Declaration solely in its capacity as Ancillary Trustee for NCNB National Bank of North Carolina, as Trustee for the Public Employees Retirement System of Ohio, and except with respect to the execution of documents contemplated by this Declaration, AmSouth Bank N.A. shall have no obligations or responsibilities hereunder and makes no warranties or representations hereunder. The parties hereto further acknowledge and agree that in consideration of the service of AmSouth Bank N.A., as Ancillary Trustee, NCNB National Bank of North Carolina, as Trustee for the Public Employees Retirement System of Ohio, herein assumes all obligations and responsibilities of AmSouth Bank N.A. hereunder and all Owners and all other parties having rights and remedies set forth in this Declaration (the "Parties") agree to look solely to NCNB National Bank of North Carolina, as Trustee for the Public Employees Retirement System of Ohio, for the performance of all obligations and responsibilities of AmSouth Bank N.A. hereunder. The Parties agree that this Declaration is executed by NCNB National Bank of North Carolina not personally or individually, but solely in its capacity as Trustee for the Public Retirement System of Ohio, and it is understood and agreed that all representations, covenants, understandings and agreements herein made on the part of NCNB National Bank of North Carolina are made and intended not as personal representations, covenants, understandings or agreements, but are made and intended for the purpose of binding only the assets of the trust over which NCNB National Bank of North Carolina is Trustee in favor of the Public Employees Retirement System of Ohio. This Declaration is executed and delivered by AmSouth Bank N.A. and NCNB National Bank of North Carolina not in their own right, but solely in the exercise of power conferred upon them by the applicable trust agreements, and the Parties expressly waive any and all personal liability against AmSouth N.A. and NCNB National Bank of North Carolina.

Section 19. Powers of Association. Until the Association is formed or otherwise organized and Declarant conveys Common Property to the Association, Declarant reserves the right to exercise all of the rights and powers of the Association in its place and stead including, without limitation, the right to levy and collect dues and assessments.

Section 20. Governing Law. This Declaration shall be construed and interpreted in accordance with the provisions of Alabama law.

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IN WITNESS WHEREOF, Declarant has caused this Declaration to be duly executed and sealed as of the day and year first above written.

AMSOUTH BANK N.A., AS TRUSTEE FOR
NCNB NATIONAL BANK OF NORTH CAROLINA,
AS TRUSTEE FOR THE PUBLIC EMPLOYEES
RETIREMENT SYSTEM OF OHIO

[CORPORATE SEAL]

ATTEST:

Linda D. Leke
Assistant Secretary

TRUST OFFICER

By:

J. E. B. Smith
Vice President, Trust Officer

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STATE OF ALABAMA

COUNTY OF ~~SHELBY~~ Jefferson

This 21st day of August, 1990, personally came before me Debra M. Montgomery, who, being by me duly sworn, says that he is John Bostwick Vice President of AMSOUTH BANK N.A., AS TRUSTEE FOR NCNB NATIONAL BANK OF NORTH CAROLINA, AS TRUSTEE FOR THE PUBLIC EMPLOYEES RETIREMENT SYSTEM OF OHIO, that the seal affixed to the foregoing instrument in writing is the corporate seal of the Corporation (or national banking association), and that said writing was signed and sealed by him, in behalf of said Corporation (or association), by its authority duly given. And the said John Bostwick acknowledged the said writing to be the act and deed of said Corporation (or association).

Debra M. Montgomery
NOTARY PUBLIC

[NOTARIAL SEAL]

My Commission expires:

Feb 1992

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EXHIBIT A

Description of Properties

TRACT I

A parcel of land situated in the West Half of the Southeast Quarter, in the East Half of the Southwest Quarter, and in the Southeast Quarter of the Northwest Quarter of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama, and being more particularly described by metes and bounds as follows:

BEGINNING at the Northwest Corner of the Southeast Quarter of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama; thence North 89°31'51" East along the north line of said Southeast Quarter for a distance of 848.96 feet; thence, leaving said north line, South 01°38'40" East for a distance of 200.00 feet; thence North 89°31'51" East for a distance of 415.82 feet to the westerly right-of-way line of Shelby County Highway No. 495 (right-of-way width varies); thence South 01°59'57" East along said westerly right-of-way line for a distance of 986.16 feet; thence South 35°57'31" West along said westerly right-of-way line for a distance of 143.80 feet to an intersection with the northerly right-of-way line of U. S. Highway No. 280 (right-of-way width varies); thence South 82°30'03" West along said northerly right-of-way line for a distance of 1099.68 feet; thence North 84°16'22" West along said northerly right-of-way line for a distance of 104.40 feet; thence South 82°34'10" West along said northerly right-of-way line for a distance of 917.78 feet to the point of curvature of a curve to the right having a central angle of 6°52'47", a radius of 3182.44 feet, and a chord which bears South 86°00'34" West for a distance of 381.90 feet; thence along the arc of said curve for a distance of 382.13 feet to an intersection with the southeasterly right-of-way line of Brook Highland Parkway (right-of-way width varies), said point being the point of curvature of a non-tangent curve to the right having a central angle of 6°14'13", a radius of 173.32 feet, and a chord which bears North 37°49'42" East for a distance of 18.86 feet; thence along the arc of said curve for a distance of 18.87 feet to the point of tangency; thence North 40°00'00" East along said southeasterly right-of-way line for a distance of 179.19 feet; thence South 50°00'00" East for a distance of 10.00 feet; thence North 40°00'00" East for a distance of 23.65 feet to the point of curvature of a curve to the left having a central angle of 61°15'02", a radius of 449.33 feet, and a chord which bears North 09°22'29" East for a distance of 457.80 feet; thence along the arc of said curve for a distance of 480.34 feet to the point of tangency; thence North 21°15'02" West for a distance of 37.01 feet to the point of curvature of a curve to the right having a central angle of 37°44'02", a radius of 393.72 feet, and a chord which bears North 02°23'01" West for a distance of 254.64 feet; thence along the arc of said curve for a distance of 259.30 feet to the point of tangency; thence North 16°29'00" East for a distance of 206.74 feet; thence North 73°31'00" West for a distance of 12.00 feet to a point on a curve to the right having a central angle of 47°00'00", a radius of 310.47 feet, and a chord which bears North 39°59'00" East for a distance of 247.60 feet; thence along the arc of said curve for a distance of 254.68 feet to the point of tangency; thence North 26°31'00" West and radial to said curve for a distance of 12.00 feet; thence North 63°29'00" East for a distance of 518.37 feet; thence North 26°31'00" West for a distance of 20.00 feet to a point on a curve to the left having a central angle of 45°13'17", a radius of 635.12 feet, and a chord which bears North 40°52'21" East for a distance of 488.37 feet; thence along the arc of said curve for a distance of 501.28 feet; thence, leaving said curve and said southeasterly right-of-way line of Brook Highland Parkway, South 89°50'48" East for a distance of 85.21 feet to a point on the east line of the Southeast Quarter of the Northwest Quarter of said Section 31; thence South 00°38'38" East along said east quarter-quarter section line for a distance of 355.06 feet to the POINT OF BEGINNING.

Containing 73.446 acres, more or less.

EXHIBIT A (cont.)

TOGETHER WITH:

TRACT II

A parcel of land situated in the NW $\frac{1}{4}$ of Section 32, Township 18 South, Range 1 West, Shelby County, Alabama more particularly described as follows:

From the NE corner of Section 32, which is the point of beginning, run in a southerly direction along the western boundary of said Section 32 for a distance of 2,628.68 feet, which point is the SW corner of the NW $\frac{1}{4}$ of Section 32; thence turn an interior angle to the right of 88° 46' 53" and run in an easterly direction for a distance of 284.05 feet; thence turn an interior angle to the right of 119° 55' 53" and run in a northeasterly direction for a distance of 568.27 feet; thence turn an interior angle to the right of 260° 55' 45" and run in a southeasterly direction for a distance of 765.11 feet to a point on the westerly right-of-way of Cahaba Valley Road; thence turn an interior angle to the right of 93° 34' 15" and run northeasterly along the western boundary of Cahaba Valley Road for a distance of 628.18 feet to a curve to the right having a radius of 5,757.55 feet and an interior angle of 05° 32' 42", thence continue along said curve for a distance of 557.21 feet to a point tangent to the curve, thence continue along said tangent in a northeasterly direction for a distance of 100.84 feet; thence turn an interior angle to the right of 108° 05' 06" and continue along said Cahaba Valley Road right-of-way for a distance of 1,097.21 feet; thence turn an interior angle to the right of 60° 32' 52" and run in a westerly direction for a distance of 286.43 feet; thence turn an interior angle to the right of 297° 30' 13" and run in a northeasterly direction for a distance of 314.97 feet, to a point on the northern boundary of said Section 32; thence turn an interior angle to the right of 62° 28' 17" and run along said northern boundary of Section 32 for a distance of 873.39 feet; thence turn an interior angle of 180° 0.1' 15" and continue westerly along said northern boundary of Section 32 for a distance of 1,329.81 feet to the point of beginning.

The above described property containing 99.43 acres, more or less.

EXHIBIT A (cont.)

TOGETHER WITH:
TRACT III

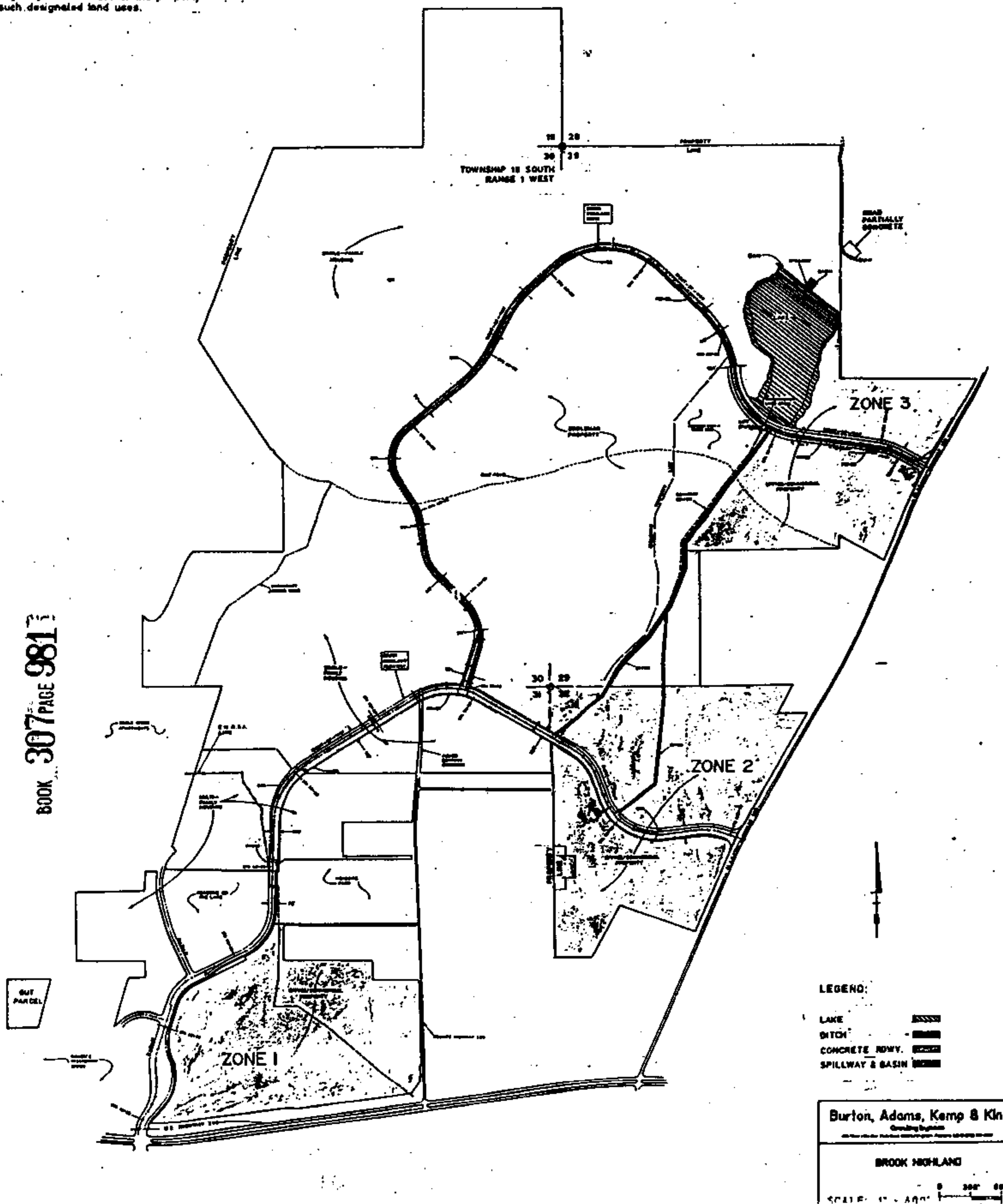
A parcel of land situated in Section 29, Township 18 South, Range 1 West, Shelby County, Alabama more particularly described as follows:

From the point of beginning, which is the SE corner of the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 29, Township 18 South, Range 1 West, Shelby County, Alabama; thence run north along the eastern boundary of the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 29 for a distance of 130.00 feet; thence turn an interior angle to the right of 301° 30' 00" and run in a southeasterly direction for a distance of 497.09 feet to a point on the western right-of-way of Cahaba Valley Road; thence turn an interior angle to the right of 83° 59' 44" and run in a northeasterly direction along the western right-of-way of Cahaba Valley Road for a distance of 634.13 feet to a curve to the right having a radius of 5,373.77 feet and an interior angle of 03° 43' 48", thence continue along said curve for a distance of 349.84 feet to a point tangent to said curve, thence continue along said tangent in a northeasterly direction along said boundary of Cahaba Valley Road for a distance of 715.66 feet to the beginning of a curve to the left, having a radius of 5,950.82 feet and an interior angle of 02° 51' 58", thence continue along said curve for a distance of 297.68 feet to a point tangent to said curve, thence continue along said tangent for a distance of 29.43 feet; thence turn an interior angle to the right of 64° 02' 30" and run in a westerly direction for a distance of 1,331.86 feet; thence turn an interior angle to the right of 270° 39' 45" and run in a northerly direction along the eastern boundary of the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of said Section 29 for a distance of 465.60 feet; thence turn an interior angle to the right of 39° 49' 05" and run in a southwesterly direction for a distance of 45.06 feet; thence turn an interior angle to the right of 166° 12' 29" and run in a southwesterly direction for a distance of 272.75 feet; thence turn an interior angle to the right of 172° 19' 16" and run in a southwesterly direction for a distance of 486.61 feet; thence turn an interior angle to the right of 198° 03' 51" and run in a southeasterly direction for a distance of 244.54 feet; thence turn an interior angle to the right of 176° 29' 34" and run in a southwesterly direction for a distance of 420.81 feet; thence turn an interior angle to the right of 186° 24' 45" and run in a southwesterly direction for a distance of 380.98 feet; thence turn an interior angle to the right of 175° 09' 23" and run in a southwesterly direction for a distance of 416.75 feet; thence turn an interior angle to the right of 184° 25' 25" and run in a southwesterly direction for a distance of 187.14 feet; thence turn an interior angle to the right of 50° 41' 06" and run in a easterly direction for a distance of 6.22 feet to the southwest corner of the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 29; thence continue in a easterly direction along the southern boundary of the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ for a distance of 1,336.19 feet to the point of beginning.

The above described property containing 64.37 acres, more or less.

EXHIBIT B

This map is for illustration only
and land use designations shown thereon do not
in any way limit the use of the property
to such designated land uses.



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EXHIBIT B (cont.)

ZONE ONE

A parcel of land situated in the West Half of the Southeast Quarter, in the East Half of the Southwest Quarter, and in the Southeast Quarter of the Northwest Quarter of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama, and being more particularly described by metes and bounds as follows:

BEGINNING at the Northwest Corner of the Southeast Quarter of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama; thence North 89°31'51" East along the north line of said Southeast Quarter for a distance of 848.96 feet; thence, leaving said north line, South 01°38'40" East for a distance of 200.00 feet; thence North 89°31'51" East for a distance of 415.82 feet to the westerly right-of-way line of Shelby County Highway No. 495 (right-of-way width varies); thence South 01°59'57" East along said westerly right-of-way line for a distance of 986.16 feet; thence South 35°57'31" West along said westerly right-of-way line for a distance of 143.80 feet to an intersection with the northerly right-of-way line of U. S. Highway No. 280 (right-of-way width varies); thence South 82°30'03" West along said northerly right-of-way line for a distance of 1099.68 feet; thence North 84°16'22" West along said northerly right-of-way line for a distance of 104.40 feet; thence South 82°34'10" West along said northerly right-of-way line for a distance of 917.78 feet to the point of curvature of a curve to the right having a central angle of 6°52'47", a radius of 3182.44 feet, and a chord which bears South 86°00'34" West for a distance of 381.90 feet; thence along the arc of said curve for a distance of 382.13 feet to an intersection with the southeasterly right-of-way line of Brook Highland Parkway (right-of-way width varies), said point being the point of curvature of a non-tangent curve to the right having a central angle of 6°14'13", a radius of 173.32 feet, and a chord which bears North 37°49'42" East for a distance of 18.86 feet; thence along the arc of said curve for a distance of 18.87 feet to the point of tangency; thence North 40°00'00" East along said southeasterly right-of-way line for a distance of 179.19 feet; thence South 50°00'00" East for a distance of 10.00 feet; thence North 40°00'00" East for a distance of 23.65 feet to the point of curvature of a curve to the left having a central angle of 61°15'02", a radius of 449.33 feet, and a chord which bears North 09°22'29" East for a distance of 457.80 feet; thence along the arc of said curve for a distance of 480.34 feet to the point of tangency; thence North 21°15'02" West for a distance of 37.01 feet to the point of curvature of a curve to the right having a central angle of 37°44'02", a radius of 393.72 feet, and a chord which bears North 02°23'01" West for a distance of 254.64 feet; thence along the arc of said curve for a distance of 259.30 feet to the point of tangency; thence North 16°29'00" East for a distance of 206.74 feet; thence North 73°31'00" West for a distance of 12.00 feet to a point on a curve to the right having a central angle of 47°00'00", a radius of 310.47 feet, and a chord which bears North 39°59'00" East for a distance of 247.60 feet; thence along the arc of said curve for a distance of 254.68 feet to the point of tangency; thence North 26°31'00" West and radial to said curve for a distance of 12.00 feet; thence North 63°29'00" East for a distance of 518.37 feet; thence North 26°31'00" West for a distance of 20.00 feet to a point on a curve to the left having a central angle of 45°13'17", a radius of 635.12 feet, and a chord which bears North 40°52'21" East for a distance of 488.37 feet; thence along the arc of said curve for a distance of 501.28 feet; thence, leaving said curve and said southeasterly right-of-way line of Brook Highland Parkway, South 89°50'48" East for a distance of 85.21 feet to a point on the east line of the Southeast Quarter of the Northwest Quarter of said Section 31; thence South 00°38'38" East along said east quarter-quarter section line for a distance of 355.06 feet to the POINT OF BEGINNING.

Containing 73.446 acres, more or less.

Together with all portions of the right-of-way of Brook Highland Parkway located adjacent to the above-described property and not maintained on a regular basis by Shelby County or such other applicable governmental authority, including without limitation all landscaped medians and unpaved portions of said right-of-way; which said portions of the right-of-way of Brook Highland Parkway shall constitute a portion of the Common Property as defined in the Declaration of Covenants, Conditions and Restrictions to which this Exhibit is attached.

EXHIBIT B (cont.)

ZONE TWO

A parcel of land situated in the NW $\frac{1}{4}$ of Section 32, Township 18 South, Range 1 West, Shelby County, Alabama more particularly described as follows:

From the NE corner of Section 32, which is the point of beginning, run in a southerly direction along the western boundary of said Section 32 for a distance of 2,628.68 feet, which point is the SW corner of the NW $\frac{1}{4}$ of Section 32; thence turn an interior angle to the right of 88° 46' 53" and run in an easterly direction for a distance of 284.05 feet; thence turn an interior angle to the right of 119° 55' 53" and run in a northeasterly direction for a distance of 568.27 feet; thence turn an interior angle to the right of 260° 55' 45" and run in a southeasterly direction for a distance of 765.11 feet to a point on the westerly right-of-way of Cahaba Valley Road; thence turn an interior angle to the right of 93° 34' 15" and run northeasterly along the western boundary of Cahaba Valley Road for a distance of 628.18 feet to a curve to the right having a radius of 5,757.55 feet and an interior angle of 05° 32' 42", thence continue along said curve for a distance of 557.21 feet to a point tangent to the curve, thence continue along said tangent in a northeasterly direction for a distance of 100.84 feet; thence turn an interior angle to the right of 108° 05' 06" and continue along said Cahaba Valley Road right-of-way for a distance of 1,097.21 feet; thence turn an interior angle to the right of 60° 32' 52" and run in a westerly direction for a distance of 286.43 feet; thence turn an interior angle to the right of 297° 30' 13" and run in a northeasterly direction for a distance of 314.97 feet, to a point on the northern boundary of said Section 32; thence turn an interior angle to the right of 62° 28' 17" and run along said northern boundary of Section 32 for a distance of 873.39 feet; thence turn an interior angle of 180° 0.1' 15" and continue westerly along said northern boundary of Section 32 for a distance of 1,329.81 feet to the point of beginning.

The above described property containing 99.43 acres, more or less.

Together with all portions of the right-of-way of Brook Highland Parkway located adjacent to the above-described property and not maintained on a regular basis by Shelby County or such other applicable governmental authority, including without limitation all landscaped medians and unpaved portions of said right-of-way; which said portions of the right-of-way of Brook Highland Parkway shall constitute a portion of the Common Property as defined in the Declaration of Covenants, Conditions and Restrictions to which this Exhibit is attached.

EXHIBIT B (cont'd)

ZONE THREE

A parcel of land situated in Section 29, Township 18 South, Range 1 West, Shelby County, Alabama more particularly described as follows:

From the point of beginning, which is the SE corner of the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 29, Township 18 South, Range 1 West, Shelby County, Alabama; thence run north along the eastern boundary of the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 29 for a distance of 130.00 feet; thence turn an interior angle to the right of 301° 30' 00" and run in a southeasterly direction for a distance of 497.09 feet to a point on the western right-of-way of Cahaba Valley Road; thence turn an interior angle to the right of 83° 59' 44" and run in a northeasterly direction along the western right-of-way of Cahaba Valley Road for a distance of 634.13 feet to a curve to the right having a radius of 5,373.77 feet and an interior angle of 03° 43' 48", thence continue along said curve for a distance of 349.84 feet to a point tangent to said curve, thence continue along said tangent in a northeasterly direction along said boundary of Cahaba Valley Road for a distance of 715.66 feet to the beginning of a curve to the left, having a radius of 5,950.82 feet and an interior angle of 02° 51' 58", thence continue along said curve for a distance of 297.68 feet to a point tangent to said curve, thence continue along said tangent for a distance of 29.43 feet; thence turn an interior angle to the right of 64° 02' 30" and run in a westerly direction for a distance of 1,331.86 feet; thence turn an interior angle to the right of 270° 39' 45" and run in a northerly direction along the eastern boundary of the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of said Section 29 for a distance of 465.60 feet; thence turn an interior angle to the right of 39° 49' 05" and run in a southwesterly direction for a distance of 45.06 feet; thence turn an interior angle to the right of 166° 12' 29" and run in a southwesterly direction for a distance of 272.75 feet; thence turn an interior angle to the right of 172° 19' 16" and run in a southwesterly direction for a distance of 486.61 feet; thence turn an interior angle to the right of 198° 03' 51" and run in a southeasterly direction for a distance of 244.54 feet; thence turn an interior angle to the right of 176° 29' 34" and run in a southwesterly direction for a distance of 420.81 feet; thence turn an interior angle to the right of 186° 24' 45" and run in a southwesterly direction for a distance of 380.98 feet; thence turn an interior angle to the right of 175° 09' 23" and run in a southwesterly direction for a distance of 416.75 feet; thence turn an interior angle to the right of 184° 25' 25" and run in a southeasterly direction for a distance of 187.14 feet; thence turn an interior angle to the right of 50° 41' 06" and run in a southeasterly direction for a distance of 6.22 feet to the southwest corner of the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 29; thence continue in a southeasterly direction along the southern boundary of the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ for a distance of 1,336.19 feet to the point of beginning.

The above described property containing 64.37 acres, more or less.

Together with all portions of the right-of-way of Brook Highland Drive located adjacent to the above-described property and not maintained on a regular basis by Shelby County or such other applicable governmental authority, including without limitation all landscaped medians and unpaved portions of said right-of-way; which said portions of the right-of-way of Brook Highland Drive shall constitute a portion of the Common Property as defined in the Declaration of Covenants, Conditions and Restrictions to which this Exhibit is attached.

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1. Deed Tax	-----	\$
2. Misc. Tax	-----	\$
3. Recording Fee	87.50	\$
4. Indexing Fee	3.00	\$
5. Notary Fee	1.00	\$
6. Certified Copy	-----	\$
Total	91.50	\$

STATE OF ALA. SHELBY CO.
I CERTIFY THIS
INSTRUMENT WAS FILED

90 AUG 31 PM 1:45

John A. Henderson
JUDGE OF PROBATE