

This instrument prepared by:
James C. Wilson, Jr.
Sirote & Permutt, P.C.
P.O. Box 55727
Birmingham, AL 35255-5727

STATE OF ALABAMA)
)
SHELBY COUNTY)

AGREEMENT RESPECTING REAL ESTATE RESTRICTIONS

THIS AGREEMENT made and entered into this 19 day of January, 1994
by and between Edward J. Marino ("Ed") and Edward J. Marino, Jr. ("E.J.").

RECITALS:

WHEREAS, Ed and E.J. are the developers of a residential subdivision in North Shelby County, Alabama known as Brook Ridge Estates ("Brook Ridge"). As developers, Ed and E.J. have retained lots E ("Ed's Lot") and F ("E.J.'s Lot"), respectively, which they anticipate using for construction of personal residences in Brook Ridge. Because Ed and E.J. are father and son and desire to retain ownership of the lots within their families, they have agreed to certain restrictions with respect to the transfer of their separate lots in Brook Ridge and desire to set forth their agreement in form suitable for recording so that said restrictions shall run with the land.

NOW, THEREFORE, in consideration of the premises and mutual covenants and conditions herein contained, the parties hereto agree as follows:

1. The restrictions on, and rights with respect to, transfer set forth hereinafter shall relate solely to the real property constituting Ed's Lot, as legally described on Exhibit A hereto and made

JCW138968.PTA

01/26/1994-02857
02:33 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
009 MCD 28.50

1994-02857

a part hereof, and the real property constituting E.J.'s Lot, as legally described on Exhibit B and made a part hereof. No other lot located in Brook Ridge is subject to, or affected by, this Agreement.

2. Until such time as Ed has built a residence on Ed's Lot or E.J. has built a residence on E.J.'s Lot, Ed and E.J. hereby agree that in the event either Ed or E.J. dies before such time, then the other party to this Agreement shall have the option, but not the requirement, exercisable as hereinafter provided, to purchase the lot owned by the deceased individual from the estate of the deceased individual. The purchase price for the lot covered by such option shall be One Hundred Fifty Thousand Dollars (\$150,000) and shall be paid to the estate of the deceased individual in fifteen (15) equal annual installments, together with interest at six percent (6%) per annum, after paying in cash at closing an amount equal to the greater of (a) ten percent (10%) of the purchase price or (b) the amount of any mortgage indebtedness secured by the lot being purchased. Closing of the purchase under this paragraph 2 shall take place at the time and in the manner hereinafter set forth.

3. In the event Ed has constructed a personal residence on Ed's Lot or E.J. has constructed a personal residence on E.J.'s Lot and thereafter one predeceases the other, in such event, but subject to the provisions hereinafter, if the lot of the decedent is to be offered for sale, the survivor shall have a right of first refusal to purchase the lot of the decedent in Brook Ridge for the purchase price determined as hereinafter provided, payable in fifteen (15) equal annual installments, together with interest at six percent (6%) per annum, after paying in cash at the closing an amount equal to the greater of (a) ten percent (10%) of the purchase price or (b) the amount of any mortgage indebtedness secured by the lot being purchased. Closing of the purchase under this paragraph 3 shall take place at the time and in the manner hereinafter set forth. Without regard to the foregoing, Ed and E.J. shall have the right to transfer and convey ownership of their lots to their respective spouses by an outright inter vivos conveyance by deed, by will or intestacy and in such event Ed's spouse or E.J.'s spouse, as appropriate, shall have the right to reside peaceably on the premises during the full term of her life. As to Ed's Lot,

E.J. hereby acknowledges and agrees that on the death of the last to die of Ed or Ed's spouse, they both shall have the right, by will, to bequeath Ed's Lot to their daughter, Mary Jo, with the full understanding and subject to the requirement that, in the event she or her legal representative, if any, decides either not to occupy the said residence or to sell the premises at any time thereafter, she shall do so only after first offering the premises to E.J. under a right of first refusal whereby he may purchase Ed's Lot at the purchase price determined as hereinafter provided payable in cash at the closing as hereinafter provided. The restriction contained herein shall be set forth in any deed to Mary Jo and acknowledged accordingly. The right of first refusal provided herein may be exercised as hereinafter provided.

4. The option or right of first refusal granted herein must be exercised by notice in writing delivered to the other party or representative of the other party within one hundred twenty (120) days of the occurrence of an event giving rise to such option or right. The closing of any sale and purchase hereunder shall take place within sixty (60) days of the written notice exercising the option or right of first refusal hereunder at a place and time mutually convenient to the parties. At the closing, a general warranty deed shall be delivered conveying title to the property. If the purchase price is to be paid in installments, the purchaser shall deliver a promissory note evidencing the unpaid purchase price and a purchase money mortgage on the lot to secure payment.

5. The purchase price for the property to be purchased under this Agreement, if not otherwise provided, shall be based on the price determined by two M.A.I. appraisers, one selected by Ed, or a representative of Ed, and one selected by E.J., or a representative of E.J. The appraisals so determined shall be averaged, and that amount shall be the purchase price then payable for all purposes under this Agreement.

6. Ed and E.J. hereby agree that the provisions of this Agreement are deemed restrictions on the property and as such, shall be recorded in the Probate Court of Shelby County,

Alabama and thereafter, shall be deemed restrictions or covenants which run with Ed's Lot and E.J.'s Lot. The restrictions set forth herein may be terminated and released by Ed and E.J. at any time by mutual agreement and likewise shall be terminated on the exercise, or failure to exercise timely, of any right hereunder by one of the parties hereto. By way of example only, in the event Ed predeceases E.J. without having built a residence on Ed's Lot, whether or not E.J. exercises his option to purchase Ed's Lot, the restrictions contained herein shall terminate on both lots on the 121st day after the event giving rise to the option provided herein unless the same has been extended in writing or exercised in which event the restrictions shall last only until the expiration of the extension or closing of the purchase.

7. Ed and E.J. hereby agree that, in recognition of the fact that the restrictions contained herein are considered restrictions running with the land, they will reference these restrictions in any document of transfer contemplated in or by this Agreement, whether deed or will. It is agreed, however, that in the event one of the parties hereto transfers their property in Brook Ridge to a party not contemplated by this Agreement but in a manner permitted by this Agreement, the restrictions contained herein shall lapse immediately and be of no further effect without the filing of any document evidencing such termination. For all purposes hereof, any purchaser or title insurance company dealing with the property shall be entitled to rely on a written certification of the existence of the event giving rise to the termination of the rights contained herein without the need for further evidence of termination of the covenants contained herein.

8. This Agreement contains the entire agreement of the parties hereto and supersedes all prior understandings and agreements respecting the property except for matters of record such as the Declaration of Restrictive Covenants on file in the Probate Court of Shelby County, Alabama and this Agreement.

9. This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama.

10. The spouses of Ed and E.J. join in the execution of this Agreement to acknowledge their willingness and agreement to be bound hereby in all respects. If a spouse shall become the owner pursuant to paragraph 3 hereof or otherwise, of a lot subject to this Agreement, such spouse shall own such lot subject to all the provisions of this Agreement and shall have all the rights and obligations hereunder as if all references to their respective spouse, Ed or E.J., was a reference to them.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be entered into and executed all as of the day and year first above written.

Edward J. Marino
Edward J. Marino

Marie Ann Marino
Marie Ann Marino

Edward J. Marino, Jr.
Edward J. Marino, Jr.

Marie G. Marino
Marie G. Marino

STATE OF ALABAMA)
Shelby COUNTY)

I, the undersigned, Notary Public, in and for said county in said state, hereby certify that Edward J. Marino, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 19 day of January, 1994.

Annette Springer
Notary Public

My Commission Expires: 10/21/96

[NOTARIAL SEAL]

STATE OF ALABAMA)
Shelby COUNTY)

I, the undersigned, Notary Public, in and for said county in said state, hereby certify that Marie Ann Marino, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, she executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 19 day of January, 1994.

Annette Springer
Notary Public

My Commission Expires: 10/21/96

[NOTARIAL SEAL]

STATE OF ALABAMA)

Shelby COUNTY)

I, the undersigned, Notary Public, in and for said county in said state, hereby certify that Edward J. Marino, Jr., whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 19 day of January, 1994.

Annette Springer
Notary Public

My Commission Expires: 10/21/96

[NOTARIAL SEAL]

STATE OF ALABAMA)

Shelby COUNTY)

I, the undersigned, Notary Public, in and for said county in said state, hereby certify that Marie G. Marino, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, she executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 19 day of January, 1994.

Annette Springer
Notary Public

My Commission Expires: 10/21/96

[NOTARIAL SEAL]

EXHIBIT A

Lot E according to the Survey of Brook Ridge Estates as recorded in Map Book 17, page 133, in the Probate Court of Shelby County, Alabama

EXHIBIT B

Lot F according to the Survey of Brook Ridge Estates as recorded in Map Book 17, page 133, in the Probate Court of Shelby County, Alabama

Inst # 1994-02857

01/26/1994-02857
02:33 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
009 MCD 28.50

Inst # 1994-02857