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

STATE OF ALABAMA)
)
COUNTY OF SHELBY)

DECLARATION OF PROTECTIVE COVENANTS

FOR

THE MAGNOLIAS AT BROOK HIGHLAND, A RESIDENTIAL SUBDIVISION

THIS DECLARATION OF PROTECTIVE COVENANTS (hereinafter referred to as the "Declaration") is made as of this 26th day of October, 1989 by Eddleman Properties, Inc., an Alabama corporation (hereinafter referred to as the "Developer"), which declares that the real property hereinafter described is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth (sometimes hereinafter referred to as the "Protective Covenants").

BOOK 263 PAGE 551

WHEREAS, the Developer is presently the owner of all of the real property described in the Plat of The Magnolias at Brook Highland, prepared by K. B. Weygand & Associates, P.C. and recorded in the Office of the Judge of Probate of Shelby County, Alabama, in Map Book 13, at page 102; and

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

WHEREAS, the Developer has deemed it desirable for the establishment and enforcement of uniform standards of development quality and the effective preservation of the appearance, value and amenities to create a nonprofit corporation (sometimes hereinafter referred to as the "Association") to which should be delegated and assigned the powers of maintaining and administering certain areas thereof which benefit all owners of property therein and enforcing the Protective Covenants and of levying, collecting and depositing such charges and assessments as may be authorized in this Declaration for that purpose; and

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

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

ARTICLE I

DEFINITIONS

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

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

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

safety, pedestrian paths, roads, lighting, recreational facilities or any other use to which the Board of Directors of the Association may accede.

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

1.03 "Developer" shall mean and refer to Eddleman Properties, Inc., or its successors or assigns if such successor or assign acquires any portion of the Property from the Developer and is designated as successor developer by Eddleman Properties, Inc.

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

263
PAGE 53
BOOK 263
1.05 "Lot" shall mean and refer, to the individual lots (as defined in the Subdivision Regulations of the Shelby County Planning Commission) as reflected on subdivision plat(s) for the Property as recorded in the Office of the Judge of Probate of Shelby County, Alabama, as the same may be amended from time to time. Any portion of the Property not included in the subdivision plat shall be considered a single Lot.

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

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

1.08 "Owner" shall mean and refer to one or more persons or entities who or which have fee simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

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

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION, ADDITIONS THERETO, DELETIONS THEREFROM

2.01 Legal Description. The real property which presently is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in Shelby County, Alabama, and is described in the Plat of The Magnolias at Brook Highland, prepared by K. B. Weygand & Associates, P.C. and recorded in the Office of the Judge of Probate of Shelby County, Alabama in Map Book 13 at page 102.

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

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

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

2.05 Approval by NCNB. Notwithstanding the aforesaid provisions of this Article II, the Association shall not subject additional property to this Declaration under Section 2.02 above, withdraw any portion of the Property from this Declaration under Section 2.03 above, or file subdivision restrictions and/or

BOOK 263 PAGE 554

amendments thereto as provided in Section 2.04 above, so long as NCNB owns any of the NCNB Property unless NCNB shall consent thereto; and the Developer shall not subdivide, plat and/or re-plat all or any part of the Property so long as NCNB owns any of the NCNB Property unless NCNB shall consent thereto.

ARTICLE III

EASEMENTS

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

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

3.03 Additional Easements and Uses. For so long as the Developer owns any Lot, the Developer, and, thereafter, the Association, on its own behalf and on behalf of all Owners, who hereby appoint the Developer and/or the Association, as the case may be, irrevocably, as their attorney-in-fact for such purposes, shall have the right to grant such additional electric, telephone, water, sanitary sewer, landscaping, irrigation, security, maintenance, drainage, gas, cable television and/or other utility, recreational or service easements or facilities (subject to applicable restrictions), in any portion of the Property, and to grant access easements or relocate any existing access easements in any portion of the Property, as the Developer

or the Association shall deem necessary or desirable for the proper operation and maintenance of the Property, or any portion thereof, or for the general welfare of the Owners, or for the purpose of carrying out any provisions of this Declaration, provided (a) such new easements or relocation of existing easements will not, in the opinion of the Board of Directors of the Association, unreasonably interfere with any Owner's enjoyment of the portion of the Property owned by such Owner, (b) any required work is done at the sole cost and expense of the Association, and after completing such work, the Association will restore any portion of the Property which was affected to the same or as good a condition as existed immediately before the commencement of such work, and (c) following the completion of such work, the Association shall cause a survey to be made of the easement showing its location on the Property and cause the same to be recorded in the Office of the Judge of Probate of Shelby County, Alabama; and provided further that the Developer shall not grant any such easements or relocate any existing easements so long as NCNB owns any of the NCNB Property unless NCNB shall consent thereto. Such right of the Developer and/or the Association shall also include the right to provide for such simultaneous or concurrent usage of any presently existing or additional easements for such purposes, not infringing upon their stated purposes, as it may deem necessary or desirable, including, but not limited to, their use for the recreational purposes of the Owners, their respective tenants, employees, guests, invitees, licensees and agents.

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

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

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

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

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

ARTICLE IV

COVENANTS FOR MAINTENANCE ASSESSMENTS

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

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

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

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

4.05 Duties of the Board of Directors. The Board of Directors of the Association shall fix the amount of all Assessments, the date of commencement for each Assessment, and the due date of such Assessment, on a per Lot basis, at least thirty (30) days in advance of any such commencement date, and shall at that time, prepare a roster of the Lots and Assessments applicable thereto, which roster shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of the amount of the Assessment, the commencement and due dates shall be sent to every Owner subject thereto not later than seven (7) days after fixing the date of commencement.

4.06 Date of Commencement and Due Date For Assessments. The liability of a Lot for any Assessment shall commence on the

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

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

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

4.09 Liability of Owners for Assessments.

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

(b) In the event that the Association elects to make certain Common Areas available for use by Owners on an optional basis, then any assessment for Common Expenses attributable to such Common Area shall be assessed against and allocated among the Owners who affirmatively elect to use such Common Area in the manner prescribed by the Board of Directors of the Association and those Owners who do not affirmatively elect to use such Common Area shall not be liable for any assessment for Common Expenses attributable to such Common Area. Unless otherwise agreed to in writing, an Owner may elect to discontinue his use of those Common Areas made available to Owners on an optional basis at any time by delivery of written notice to the Association in which event the Owner shall have no liability for any further liability for assessments for Common Expenses with respect to such Common Areas effective on the first day of the first calendar month commencing not less than thirty (30) days after deliver of such notice.

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

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

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

(c) The lien herein granted to the Association shall be perfected by recording a Claim of Lien in the Office of the Judge of Probate of Shelby County, Alabama, stating the description of the Lot encumbered thereby, the name of its Owner, the amount due and the date when due. The lien shall continue in effect until all sums secured by it, as herein provided, shall have been fully paid. Such Claim of Lien shall include only Assessments which are due and payable when the Claim of Lien is recorded, plus interest, late charges, costs, attorneys' fees and advances to pay taxes, prior encumbrances and other proper charges together with interest thereon, all as provided herein. Such Claim of Lien shall be signed and verified by an officer or

agent of the Association. Upon full payment of all sums secured by such Claim of Lien, the same shall be satisfied of record. No sale or other transfer of a Lot shall relieve any Owner from liability for any Assessment due before such sale or transfer, nor from the lien of any such Assessment. The written opinion of an officer of the Association that any lien is subordinate to any given mortgage shall be deemed to be dispositive of that issue.

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

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

(f) The Association shall have the right to assign its Claim of Lien, and any other lien rights provided for in this

Article, for the recovery of any unpaid Assessments to the Developer, to any Owner or group of Owners or to any third party.

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

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

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

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

ARTICLE V

COMMON EXPENSES

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

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

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

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

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

ARTICLE VI

ARCHITECTURAL CONTROL

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

6.02 Architectural Review Board.

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

(b) The vote or written consent of a majority of the members of the ARB shall be the Act of the ARB; provided that a majority of the members of the ARB may delegate the right to act for and on behalf of the ARB to one or more of its members.

(c) Subject to the provisions of subparagraph (a) above, the remaining members of the ARB shall have full authority to elect a successor to the ARB upon the death or resignation of a member of the ARB. Subject also to the provisions of subparagraph (a) above, the Owners of a majority of the Lots shall have the power, through a duly recorded written instrument, to remove a member from the ARB and to elect a member of the ARB to fill any vacancy in the ARB created by such removal or otherwise.

(d) The members of the ARB shall not be entitled to any compensation for services performed pursuant to this covenant.

6.03 Powers and Duties of the ARB. The ARB shall have the following powers and duties:

(a) To adopt and approve, from time to time and at its election, Architectural Planning Criteria (hereinafter referred to as "APC") for the Property. The APC, if any, shall be consistent with the provisions of this Declaration, and shall not be effective until approved in writing by (i) a majority of the members of the Board of Directors of the Association at a meeting duly called and noticed and at which a quorum is present and voting, and (ii) NCNB if NCNB shall then own any of the NCNB Property. Notice of the adoption of the APC, or any modification or amendment to the APC, including a verbatim copy thereof, shall be delivered to each member of the Association, provided that such delivery shall not constitute a condition precedent to the effectiveness or validity of such adoption or modification.

(b) To require submission to the ARB of plans and specifications for any improvement or structure of any kind, and any change, modification or alteration thereof, including, without limitation, any such improvement or change to any building, fence, wall, sign, lighting system, site paving, grading, screen enclosure, sewer, drain, disposal system, landscaping or landscape device or object, the construction or placement of which is or is proposed upon any Lot or the Property. Such plans and specifications shall be in such form and shall contain such information as may be reasonably required by the ARB and shall include but not necessarily be limited to:

1. An accurately drawn and dimensional plot plan showing all building set-backs, easements, drives and walks.

2. Foundation plan, floor plan, exterior elevations of buildings as they will actually appear after all back filling and landscaping is done from finished ground up. (The back filling sketch may be drawn by a builder.)

3. All plans must include a summary specifications list of proposed materials and samples of exterior materials which cannot be adequately described on the plans, and of materials with which the committee is unfamiliar.

The ARB may also require such additional information as reasonably may be necessary for the ARB to evaluate completely the proposed structure or improvement in accordance with this Declaration and the APC.

(c) To approve or disapprove the submitted plans and specifications for any improvement or structure as hereinabove described prior to commencement of construction of such improvement or structure. In the event that the ARB shall fail, for a period of ten (10) business days from the date of receipt of such submission, to approve or disapprove any plans or specifications submitted to it for approval, the same shall be deemed to have been approved. The approval by the ARB of plans and specifications submitted for its approval, as herein specified, shall not be deemed to be a waiver by the ARB of the right to object to any of the features or elements embodied in such plans or specifications if and when the same features and elements are embodied in any subsequent plans and specifications submitted for approval for use on other Lots. Any party aggrieved by a decision of the ARB shall have the right to make a written request to the Board of Directors of the Association, within thirty (30) days of such decision, for a review thereof. The determination of the Board of Directors, after reviewing any such decision, shall in all events be dispositive. If any improvement or structure as aforesaid shall be completed, changed, modified or altered without the prior approval of the ARB, or shall not be completed, changed, modified or altered in accordance with the approvals granted by the ARB, then the Owner shall, upon and in accordance with a demand by the ARB, cause the property, improvement or structure either to be restored to its original condition or to comply with the plans and specifications as approved by the ARB, and shall bear all costs and expenses of such restoration or compliance, including the costs and reasonable attorneys' fees of the ARB. Notwithstanding the aforesaid, after the expiration of one year from the date of final completion of any such improvement or structure, such improvement or structure shall be deemed to comply with all of the provisions hereof unless notice to the contrary shall have been recorded in the office of the Judge of Probate of Shelby County, Alabama, or legal proceedings shall have been instituted to enforce such compliance. Any agent or member of the ARB may at any reasonable time enter any building or property subject to the jurisdiction of the ARB which is under construction or on or in which the agent or member may believe that a violation of the protective covenants in this Declaration is occurring or has occurred. Prior to the use or occupancy of any improvement or structure

constructed or erected on any Lot, the Owner thereof shall apply for certification from the ARB that the construction thereof has been completed in accordance with the plans and specifications approved by the ARB. In the event that the ARB shall fail, for a period of ten (10) business days from the date of receipt of such application, to give or deny such certification, the same shall be deemed to have been given. The ARB may, from time to time, delegate to a person or persons, who may or may not be a member of the ARB, the right to approve or disapprove plans and specifications and to issue such certification.

(d) To adopt fees which shall be designed to reimburse the Association for the necessary and reasonable costs incurred by it in processing requests for ARB approval of any matters under its jurisdiction. Such fees, if any, shall be payable to the Association, in cash, at the time that any application for approval is sought from the ARB.

(e) In the event the fees specified in subparagraph (d) above or any other costs or expenses of the ARB or Board pursuant to any other provisions of this Article are not paid by the Owner, they shall become a lien of the Association on the affected Lot enforceable in the manner specified in Article IV hereof.

(f) Neither the ARB nor any architect or agent thereof nor the Developer shall be responsible to check for any defects in any plans or specifications submitted, revised or approved in accordance with the foregoing provisions, nor for any structural or other defects in any work done according to such plans and specifications. The ARB shall not be liable to any Owner for any actions taken, or omitted to be taken by the ARB or the individual members thereof in the performance of their respective duties hereunder.

6.04 Subsurface Conditions.

(a) The Property is located in an area which includes sinkholes and subsurface conditions which may result in sinkholes. Approval of the submitted plans and specifications by the ARB as herein provided shall not be construed in any respect as a representation or warranty of the ARB and/or the Developer to the Owner submitting such plans and specifications, or successors or assigns of such Owner, that the surface or subsurface conditions of the Lot are suitable for the construction of the improvements contemplated by such plans and specifications. It shall be the sole responsibility of the Owner to determine the suitability and adequacy of the surface and subsurface conditions of the Lot for the construction of any and all structures and other improvements thereon.

(b) Neither the ARB and its individual members, nor the Developer and its partners, agents, and employees and the officers, directors, agents, and employees of its partners, shall be liable to any Owner, or the successors, assigns, licensees, lessees, employees and agents of any Owner, for loss or damage on account of injuries to the property or to any buildings, improvements, or structures now or hereafter located upon the Property, or on account of injuries to any Owner, occupant, or other person in or upon the Property, which are caused by, or arise as a result of, past or future soil and/or subsurface conditions, known or unknown (including, without limitation, sinkholes, underground mines, and limestone formations), under or on the Property.

6.05 Construction of Improvements.

(a) During all construction, all vehicles involved, including those delivering supplies, must enter the Lot on the driveway only as approved by the ARB so as not to damage, unnecessarily, trees, street paving and curbs. The Association shall have the right to repair any damage not repaired after ten (10) days written notice and to charge the Owners a reasonable cost for such repair, which charge shall constitute a lien upon such Lot enforceable in accordance with Section 4.10 of this Declaration. During construction, the homes, garages and building sites must be kept clean. All building debris, stumps, trees, etc. must be removed from each Lot by Owner or his agents as often as necessary to keep the Lot attractive. Such debris will not be dumped in any area of the Property.

(b) Upon the commencement of construction of any building on a Lot, work thereon must be prosecuted diligently and continuously and must be completed within twelve (12) months from date of commencement of construction.

ARTICLE VII

RESTRICTIONS

7.01 Use Restrictions. The Property will be used for residential purposes only, and no trade or business purposes, including all types of home industry, will be permitted. No building or structure other than a single family dwelling shall be erected on any Lot within the Property except as otherwise permitted herein. Prohibited uses include, but are not limited to:

(a) dangerous, noxious, offensive or excessively noisome activities which may be or become an annoyance or nuisance to Owners; and

(b) raising, breeding, or keeping of any animals, birds, or fowl; provided that an Owner shall be permitted to keep not more than two dogs and/or cats as domestic pets on a single Lot and provided further that the Association, in its sole discretion, may approve more animals to be kept as domestic pets on a Lot; and

(c) exploring, mining, boring, quarrying, drilling, or otherwise removing oil or other hydrocarbons, minerals, gravel or natural gas.

Any Owner may request from the Association at any time a determination of whether a projected use of its Lot is permitted. A certificate to that effect signed by an officer of the Association shall be deemed to be dispositive of that issue.

7.02 Lot Size. Unless otherwise permitted in Article II of this Declaration, no Lot shall be subdivided without the prior written approval of the Association and the approval of NCNB if NCNB then owns any of the NCNB Property.

7.03 Limitation on Size and Location of Structures.

(a) No structure shall be erected, altered, placed or permitted to remain on any Lot other than a main single family dwelling not to exceed two and one-half stories, or forty-five (45) feet in height and a private garage for not more than four cars. No detached building other than the main single family dwelling shall be constructed or permitted on any Lot unless previously approved by the ARB. Notwithstanding anything to the contrary herein, the Developer shall be permitted to construct and maintain on one Lot only a structure and related facilities designed and used as a sales center for the marketing of real estate including the Lots subject to these covenants and adjoining land and improvements thereon owned by the Developer.

(b) No building shall be located on any Lot nearer to the front Lot line or nearer to the side street line than the minimum building setback lines shown on the recorded plat for the Property. No building shall be located on any Lot nearer than 25 linear feet to the front Lot line, or nearer than 20 linear feet to any side street line, except that each Lot abutting Brook Highland Parkway which shall have a minimum building setback line of 35 linear feet. No building shall be located nearer than 5 linear feet to an interior Lot line. No dwelling shall be located on any interior lot nearer than 30 linear feet to the rear lot line. For the purpose of this covenant, eaves, steps,

and open decks or terraces shall not be considered as a part of a building, provided, however, that this shall not be construed to permit any portion of a building on a Lot to encroach upon another Lot.

(c) Each main structure residential building, exclusive of open porches, garages, basements and carports, shall not be less than 1,800 square feet on the ground floor of any one-story building; not less than a total of 2,000 square feet in the case of a 1-1/2 story building, with a minimum of 1,400 square feet of the 2,000 square feet being on the first floor of a 1-1/2 story building; and not less than 2,000 square feet in the case of a 2-story building with a minimum of 1,000 square feet being on each floor of the 2-story building.

(d) No Lot shall have direct driveway to Brook Highland Parkway.

(e) No tree houses shall be permitted.

7.04 Exterior Lighting. Exterior lighting shall be subject to the review of the ARB.

7.05 Utilities. All electrical and telecommunication lines located upon the Property, other than those existing on the date of this Declaration, shall be installed and maintained underground unless the ARB specifically approves above ground installation of such lines.

7.06 Maintenance. All buildings, landscaping and other improvements upon individual Lots shall be continuously maintained by the Owner thereof so as to preserve a well-kept appearance, especially along the boundaries of any Lot. The Association shall have the responsibility of insuring that all such improvements are so maintained. The Association may appoint a maintenance committee to oversee and implement its responsibility and to amend and enforce the same, including the following maintenance standards.

(a) Trash. No trash, garbage or other refuse shall be dumped, stored or accumulated on any Lot. Trash, garbage or other waste shall not be kept on any Lot except in sanitary containers or garbage compactor units. Garbage containers, if any, shall be kept in a clean and sanitary condition, and shall be so placed or screened by shrubbery or other appropriate material approved in writing by the ARB as not to be visible from any road within sight distance of the Lot at any time except during refuse collection. No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted, except during the construction period.

(b) Landscaping. No weeds, underbrush or other unsightly growth shall be permitted to grow or remain upon any part of a Lot and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain upon any part of a Lot, including vacant parcels. This provision shall not apply to the Developer until the last Lot is sold to an Owner other than the Developer.

7.07 Temporary Structures. No structure of a temporary character, trailer, basement, tent or shack shall be used at any time as a residence either temporarily or permanently. No storage building of any type shall be permitted unless such building is designed as part of the main residential structure and approved by ARB. There shall be no occupancy of any dwelling until the interior, exterior and landscaping of the dwelling is completed and a certificate, or other satisfactory evidence, of completion is received and approved by the ARB.

7.08 Fences and Hedges. Chain link or any other wire fences shall not be used. A wooden fence or privacy screen may be used in such areas; provided that no fence, wall, hedge or shrub planting, which obstructs sight lines at elevations between 2 and 6 feet above the roadways, shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points 25 feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersections of the street property lines extended. The same sight line limitations shall apply on any lot within 10 feet from the intersection of a street line with the edge of a driveway or alley pavement. Trees shall be permitted to remain within such distances of such intersections provided the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

7.09 Signs. No sign of any kind shall be displayed to the public view on any Lot except one professional sign of not more than two (2) square feet, one sign of not more than six square feet advertising the property for sale or rent, or signs used by a builder to advertise during the construction and sales period. All signs shall comply with design specifications of the ARB. No signs shall be nailed to trees. This provision shall not apply to the Developer during the sales period.

7.10 Garages. Garage openings will be permitted on the front of houses when electric automatic door closers are installed.

7.11 HVAC Equipment.

(a) Outside air conditioning units may not be located in the front yard or any required side or rear yard.

(b) No plumbing or heating vent shall be placed on the front side of the roof. All vents protruding from roofs shall be painted the same color as the roof covering.

7.12 Satellite Dishes. No satellite dishes of any kind will be allowed on any Lot.

7.13 Storage of Boats, Trailers and Other Vehicles. No motor homes, boats, trailers, wrecked cars, unmaintained cars, or vehicles other than operating automobiles, pick-up trucks, or vans can be parked or stored on the streets within the Property or in any location that can be seen from said streets.

7.14 Tenants. It shall be the responsibility of each Owner to insure that any tenant of any Lot or portion thereof which is owned by it or him receives a copy of the aforesaid restrictions and that every lease utilized by such Owner contain a provision therein stating that every tenancy is subject to all of the terms and provisions of this Declaration, the Articles and the By-Laws of the Association, and its Rules and Regulations, if any. The Owner shall remain liable for the performance and observation of all terms and conditions in this Declaration, the Articles, the By-laws and all Rules and Regulations adopted pursuant thereto and for all costs of enforcing the same.

7.15 Enforcement. If a determination is made by the Association that any of the aforementioned restrictions are being or have been violated upon any Lot, then the Association shall so notify the Owner in writing, specifying the violation. If within thirty (30) days from such notification, the Association shall make a second determination that sufficient progress has not been made to remedy the violation, the Association may itself, direct such actions to be taken as shall be necessary or appropriate to remedy such violation. The Owner shall be liable for the cost and expense of all such actions and the Association may treat all such costs and expenses therefor as a charge which shall become a lien of the Association on the affected Lot enforceable in the manner specified in Article IV hereof.

7.16 Variance Requests. The ARB, in its discretion, shall have the authority to modify the requirements of Sections 7.02, 7.03, 7.08, 7.09, 7.10, 7.11, 7.12, and 7.13 of this Article VII upon the request for a variance from such requirements by an Owner with respect to his Lot. If the ARB grants a requested variance, the nonconforming improvements subject to said request shall not be deemed to be in violation of these covenants.

BOOK 263 PAGE 570

ARTICLE VIII

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

8.01 Membership. Every Owner, including the Developer, shall, for so long as it is an Owner, at all times be a member of the Association. Membership shall be appurtenant to, and may not be separated from, ownership of any Lot. Membership shall attach automatically upon the acceptance of delivery of the instrument of transfer of such ownership interest, provided that such instrument is promptly recorded in the Office of the Judge of Probate of Shelby County, Alabama and a true copy of such recorded instrument is promptly delivered to the Association. Membership shall terminate automatically upon the tendering of delivery of an instrument of transfer of such ownership interest (provided such tender is accepted), or upon such ownership interest being divested in some other manner.

8.02 Voting. Subject to the restrictions hereinafter set forth, each member shall be entitled to one (1) vote for each Lot in which he holds the interest required for membership. When one or more persons hold such interest, all such persons may be members, and the vote(s) for such Property shall be exercised in the manner set forth in the By-Laws, but in no event shall more than one vote be cast with respect to any one Lot. There shall be no fractional voting. The votes of an Owner of more than one Lot cannot be divided for any issue and must be voted as a whole. Except where otherwise required under the provisions of this Declaration, the Articles or the By-Laws, the affirmative vote of Owners who own a majority of the total Lots of the Property that are represented at any meeting of members duly called, and at which a quorum is present, shall be binding upon the members. Voting may take place by proxy executed and delivered in the manner set forth in the By-Laws.

Notwithstanding the provisions of this Section 8.02, the Developer shall have the right to elect the members of the Board of Directors of the Association, and in the event of vacancies, the Developer shall fill vacancies, until such time as all Lots have been sold to Owners other than Developer, or the Developer elects, at its option, to terminate its control of the Association, whichever first occurs.

ARTICLE IX

NATURE OF PROTECTIVE COVENANTS; DEFAULTS AND REMEDIES

9.01 Protective Covenants Running with the Land. The foregoing Protective Covenants shall constitute a servitude in and upon the Property and shall run with such Property and inure

to the benefit of and be enforceable by the Developer, by the Association, by any Owner, or by NCNB (for so long as NCNB owns any of the NCNB Property) for a term of fifty (50) years from the date this Declaration is recorded, after which time the said Protective Covenants shall automatically be extended for successive periods of ten (10) years, unless an agreement, which has been signed by Owners who own two-thirds (2/3) or more of the then existing Lots of the Property, agreeing to terminate or modify this Declaration has been recorded in the Office of the Judge of Probate of Shelby County, Alabama.

9.02 Default. Violation or breach of any of the Protective Covenants shall constitute a default hereunder. Any person given the right to enforce the Protective Covenants herein set forth may provide written notice thereof to any Owner (and any Institutional Mortgagee who or which has requested the same and provided to the Association an address for such notices).

9.03 Remedies for Default. The existence of any default which has not been cured within thirty (30) days of the notice specified above shall give the Developer, the Association, any Owner, NCNB (for so long as NCNB owns any of the NCNB Property) in addition to all other remedies specified herein, the right to proceed at law or in equity to compel compliance with the terms of these Protective Covenants and to prevent the violation or breach of any of them.

9.04 Nature of Remedies; Waiver. All rights, remedies and privileges granted to the Developer, Association, the Owners, and NCNB, pursuant to the provisions of this Declaration shall be deemed to be cumulative, and the exercise of any one or more of them shall not be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same, or any other party, from pursuing such other and/or additional rights, remedies, or privileges as may be available to such party at law or in equity. The failure at any point in time to enforce any covenant or restriction shall in no event be deemed a waiver of the right thereafter to enforce any such covenant or restriction.

9.05 Assignment. The Developer and/or the Association shall have the right to assign their respective rights to enforce these Protective Covenants. In the event of such assignment, the assignee shall have all the rights, remedies and privileges granted to its assignor under the provisions of this Article IX.

9.06 No Right of Reverter. No covenant, condition or restriction set forth in this Declaration is intended to be, or shall be construed as, a condition subsequent or as creating the possibility of reverter.

ARTICLE X

AMENDMENT OF DECLARATION

10.01 Amendment By Developer. The Developer reserves the right unilaterally to amend this Declaration, and to do so at such time, and upon such conditions, in such form and for such purposes as it, in its sole discretion, shall deem appropriate by preparing and recording an amendment hereto, provided, however, that this right of unilateral amendment is subject to the limitations set forth in Section 10.03 hereof and provided, further, that this right of unilateral amendment shall expire after all Lots have been sold to Owners other than the Developer, after which time this Declaration may be amended only in the manner set forth in Section 10.02 below.

10.02 Amendment By Association.

(a) Amendments to this Declaration may be proposed by either the Board of Directors of the Association acting upon a vote of the majority of the Directors, or by the affirmative vote of members of the Association who own not less than a majority of the Lots, whether meeting as members or by instrument in writing signed by them. Upon any amendment or amendments to the Declaration being proposed by the said Board of Directors or members, such proposed amendment or amendments shall be transmitted to the President of the Association or, in the absence of the President, such other officer of the Association, who shall thereupon call a special meeting of the members of the Association for a date not sooner than twenty (20) days, nor later than sixty (60) days, from receipt by him of the proposed amendment or amendments, and it shall be the duty of the Secretary to give each member written or printed notice of such special meeting, stating the time and place thereof, and reciting the proposed amendment or amendments in reasonably detailed form, which notice shall be mailed not less than ten (10) days nor more than fifty (50) days, before the date set for such special meeting. Such notice shall be given to any Institutional Mortgagee of record who requests such notices and provides an address therefor to the Association. If mailed, such notice shall be deemed to be properly given when deposited in the United

States mail, addressed to the member at his post office address as it appears on the records of the Association, the postage thereon being prepaid. Any member may, by written waiver of notice signed by such members, waive such notice, and such waiver, when filed in the records of the Association, whether before or after the holding of the meeting, shall be deemed equivalent to the giving of such notice to such member. At such special meeting, the amendment or amendments proposed must be approved by the affirmative vote of members who own not less than

two-thirds (2/3) of the total Lots of the Property in order for such amendment or amendments to become effective. Thereupon, such amendment or amendments to the Declaration shall be transcribed and certified by the President and Secretary of the Association as having been duly adopted and the original or executed copy of such amendment or amendments so certified and executed with the same formalities as a deed shall be recorded in the Office of the Judge of Probate of Shelby County, Alabama within twenty (20) days from the date on which the same became effective, such amendment or amendments to specifically refer to the recording identifying the Declaration. Thereafter, a copy of said amendment or amendments, in the form in which the same were placed of record, shall be delivered to all of the Owners, but mailing or delivering a copy thereof shall not be a condition precedent to the effectiveness of such amendment or amendments. At any meeting held to consider such amendment or amendments, the written vote of any member of the Association shall be recognized if such member is not in attendance at such meeting or represented thereat by proxy, provided such written vote is delivered to the Secretary of the Association at or prior to such meeting.

10.03 Restrictions on Amendment. Notwithstanding the foregoing provisions of this Article X,

(a) No amendment shall materially adversely affect the rights of any Owner or group of Owners, unless such Owner or all Owners so adversely affected shall consent thereto. For example, no amendment shall alter the basis for apportionment of assessments in a manner which would materially adversely affect any Owner or Owners, as opposed to other Owners, unless the Owner or Owners so adversely affected shall consent thereto.

(b) No amendment shall materially adversely affect the rights and priorities of any Institutional Mortgagees of record or change the provisions of this Agreement with respect to Institutional Mortgagees, unless all Institutional Mortgagees of record so adversely affected shall consent thereto.

(c) No amendment to this Declaration shall make any change in the qualifications of the membership nor in the voting or property rights of members, without approval in writing by all members and the joinder of all Institutional Mortgagees.

(d) No amendment to this Declaration shall abridge, limit, amend or alter the rights, privileges, powers or options of the Developer or any Institutional Mortgagee, as the same are set forth in this Declaration, without the prior written consent of the Developer if it is so affected and/or any Institutional Mortgagee which is so affected.

(e) No amendment shall be made to this Declaration so long as the Developer owns any Lot, unless the Developer shall consent thereto. Such consent may be withheld by the Developer for any reason or no reason at all.

(f) No amendment shall be made to this Declaration so long as NCNB owns any of the NCNB Property unless NCNB shall consent thereto.

10.04 Scrivener's Error. Notwithstanding the foregoing amendment provisions, any scrivener's error or omission may be corrected by the filing of an amendment to this Declaration consented to by the Board of Directors of the Association and any Owners or mortgagees of record directly affected by the amendment. No other Owner is required to consent to any such amendment. If there appears to be any other omissions or errors in this Agreement, scrivener's or otherwise, and such error or omission does not materially adversely affect the rights and interests of any other party, then such error or omission may be corrected by the filing of an amendment to this Declaration executed by the Board of Directors of the Association without the consent of any other party.

ARTICLE XI

GENERAL PROVISIONS

11.01 Notices. Any notice required to be sent to any Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed by United States mail, postage paid, to the address of such Owner as it appears on the records of the Association at the time of such mailing.

11.02 Severability. Invalidation of any provision or provisions hereof by judgment or court order shall in no way affect any previous other provision, all of which shall remain in full force and effect.

11.03 Governing Law. Should any dispute or litigation arise between any of the parties whose rights or duties are affected or determined by this Declaration as the same may be amended from time to time, said dispute or litigation shall be governed by the laws of the State of Alabama.

11.04 Captions. The captions and titles of the various Articles and Sections in this Declaration are for convenience of reference only, and in no way define, limit or describe the scope or intent of this Declaration.

11.05 Usage. Whenever used herein the singular shall include the plural and the singular, and the use of any gender shall include all genders.

11.06 Conflict. If any irreconcilable conflict should exist, or hereafter arise, with respect to the interpretation of any provisions of this Declaration, the Articles, the By-Laws or the Rules and Regulations, then the provisions of this Declaration shall prevail.

11.07 Effective Date. This Declaration shall become effective upon its recordation in the Office of the Judge of Probate of Shelby County, Alabama.

IN WITNESS WHEREOF, the undersigned have duly executed this Declaration as of the date first above written.

DEVELOPER:

EDDLEMAN PROPERTIES, INC.

By:

Its:

Donald D. Eddleman
VICE-PRESIDENT

BOOK 263 PAGE 576

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County in said State hereby certify that Douglas D. Eddleman, whose name as Vice-President of Eddleman Properties, Inc., an Alabama corporation, is signed to the foregoing Declaration; and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing Declaration of Protective Covenants, he, as such officer, and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal of office this 26th day of October, 1989.

Diane C. Collins
Notary Public

My Commission Expires: May 21 1990

BOOK 263 PAGE 577

EXHIBIT A

This instrument was prepared by M. Glenn Perry, Jr.
3000 SouthTrust Tower, Birmingham, Alabama 35203

69 SEP 13 PM 3:47

ARTICLES OF INCORPORATION
OF
THE MAGNOLIAS AT BROOK HIGHLAND
HOMEOWNERS' ASSOCIATION, INC.

The undersigned, acting as incorporator of a nonprofit corporation under the Alabama Nonprofit Corporation Act, Code of Alabama 1975 §§10-3A-1 et seq., (the "Act"), adopt the following Articles of Incorporation for such corporation:

FIRST: The name of the corporation shall be The Magnolias at Brook Highland Homeowners' Association, Inc., hereinafter referred to as "Association."

SECOND: the period of its duration is perpetual.

THIRD: The general nature, objects and purposes for which the Association is organized is to establish an entity:

1. To provide for the efficient preservation of the appearance, value and amenities of the property (hereinafter referred to as the "Property") which is subject to the Declaration of Protective Covenants for The Magnolias at Brook Highland, a Residential Subdivision, recorded or to be recorded in the Office of the Judge of Probate of Shelby County, Alabama (hereinafter referred to as "Declaration").

2. To own and maintain, repair and replace the general and/or Common Areas of the Property including structures, landscaping and other improvements in and benefitting the Property for which the obligation to maintain has been delegated and accepted.

3. To control the specifications, architecture, design, appearance, elevation and landscaping of all improvements and structures of any kind, including, without limitation, buildings, fences, walls, signs, lighting systems, site paving, grading, screen enclosures, sewers, drains, landscaping, landscape devices or objects and/or other structures constructed, placed or permitted to remain on the Property, as well as any alteration, improvement, addition and/or change therein, thereof or thereto, all in accordance with the Declaration.

4. To provide, purchase, acquire, own, replace, improve, maintain and/or repair such real property,

BOOK 263 PAGE 578

buildings, structures, street lights, landscaping, paving or other improvements in and/or benefitting the Property for which the obligation to so maintain and repair has been, or may be, delegated to, and accepted by, the Association.

5. To provide services, the responsibility for which has been, or may be, delegated to, and accepted by, the Association.

6. To operate without profit for the sole and exclusive benefit of its members.

7. To perform any and all other functions contemplated of the Association or otherwise undertaken by its Board of Directors in accordance with the Declaration.

FOURTH: The powers of the Association shall include and be governed by the following provisions:

A. The Association shall have all of the common law and statutory powers, authority and privileges generally granted to nonprofit corporations under the laws of the State of Alabama. The Association shall have such additional powers as are reasonably necessary or appropriate to implement and effectuate the purposes of the Association and as are not inconsistent with these Articles, and the Declaration, as they may from time-to-time be amended, including, without limitation:

1. To exercise, undertake and accomplish all of the rights, duties and obligations which may be granted to or imposed upon the Association pursuant to the Declaration, Articles, By-Laws, or any Rules and Regulations adopted pursuant thereto, and to enforce the provisions thereof.

2. To maintain, repair, replace, operate and manage the Common Areas, and such other parts or parcels of the Property or other property adjacent thereto as may be delegated to, and accepted by, the Association, including the right to make further improvements to the Common Areas or such other property.

3. To purchase, lease, hold, operate, sell, trade, dedicate, transfer, mortgage or otherwise acquire or dispose of interests in real or personal property in connection with the affairs of the Association.

4. To promulgate, amend and enforce rules, regulations, By-Laws, covenants, restrictions and agreements in connection with and to effectuate the affairs and purposes of the Association and to enforce by legal means the provisions of the Articles or the Declaration.

5. To fix, levy, collect and enforce payment of all assessments or charges to be levied against Lots (as defined in the Declaration) within the Property pursuant to the terms of the Declaration and By-Laws, and to defray all costs and expenses in connection therewith, as well as the costs and expenses of effectuating the objects and purposes of the Association, and to create reasonable reserves for such costs and expenses.

6. To borrow money, and, from time to time, to make, accept, endorse, execute and issue debentures, promissory notes or other obligations of the Association for monies borrowed, in payment of property acquired, or for any of the other purposes of the Association, and to secure the repayment of any such obligation by mortgage, pledge or other instrument of trust, or by lien upon, assignment of, or agreement in regard to, all or any part of the property, rights or privileges of the Association, wherever situated.

7. To pay taxes and other charges, if any, on or against any property, if any, owned by the Association.

8. To charge recipients for services rendered by the Association and to charge the user for use of Association property when such is deemed appropriate.

9. To participate in mergers or consolidations with any other nonprofit corporation or association which may perform similar functions located within the general vicinity of the Property.

10. To employ such personnel or to enter into, make, perform or carry out contracts with others to effectuate the aforesaid purposes with any person, firm, corporation, association or other entity and so contract for the management of the Association and to delegate to such contractors all powers and duties of the Association.

11. To delegate power or powers where such is deemed to be in the interest of the Association.

12. To purchase insurance for the protection of the Association, its officers, directors or members.

13. The objects and purposes set forth in Article Third of these Articles shall be construed as powers as well as objects and purposes, and the Association shall have and may exercise such powers as if such powers were set forth in full herein.

14. The Association shall have and may exercise all

BOOK 263 PAGE 580

powers set forth in any other Article of these Articles of Incorporation.

B. All funds and title of properties acquired by the Association and the proceeds therefrom shall be held in trust for the members in accordance with the provisions of the Declaration and the Articles and By-Laws of the Association.

FIFTH: The Members of the Association shall consist of all Owners (as defined in the Declaration), and the membership shall be appurtenant to, and may not be separated from, ownership of any Lot (as defined in the Declaration). Membership shall attach automatically upon the acceptance of delivery of the instrument of transfer of such ownership interest, provided that such instrument is promptly recorded in the Office of the Judge of Probate of Shelby County, Alabama, and a true copy of such recorded instrument is promptly delivered to the Association. Membership shall terminate automatically upon the tendering of delivery of an instrument of transfer of such ownership interest (provided such tender is accepted) or upon such ownership interest being divested in some other manner.

SIXTH: The affairs of the Association shall be managed by a Board of Directors consisting of the number of directors as shall be determined by the By-Laws; provided, however, that the Board of Directors shall consist of not less than three directors, and in the absence of a provision in the By-Laws shall consist of three Directors. Directors of the Association shall be elected at the annual meeting of the members in the manner determined by the By-Laws. Vacancies on the Board of Directors shall be filled in the manner provided by the By-Laws.

Notwithstanding the provisions set forth in this Article Sixth, Eddleman Properties, Inc., an Alabama corporation (the "Developer"), its successors and assigns, shall elect the members of the Board of Directors of the Association, and in the event of vacancies, the Developer shall fill vacancies, until such time as all Lots have been sold to Owners other than the Developer, or the Developer elects, at its option, to terminate control of the Association, whichever first occurs. Within sixty (60) days after the date of termination of control of the Association by the Developer, the Board of Directors shall call and give not less than ten (10) nor more than thirty (30) days notice of a special meeting of the membership for the purpose of electing the members of the Board of Directors.

The initial Board of Directors shall have three directors. The names and addresses of the members of the Board of Directors who shall hold office until their successors are elected and have qualified, or until such Directors are removed, are as follows:

<u>NAME</u>	<u>ADDRESS</u>
Billy D. Eddleman	2700 Highway 280 South, Suite 325 Birmingham, Alabama 35223
Bobbie D. Eddleman	2912 Ryecroft Road Birmingham, AL 35223
Douglas D. Eddleman	2700 Highway 280 South, Suite 325 Birmingham, Alabama 35223

Any director may be removed, either with or without cause, at any time, by the affirmative vote of a majority of the members at a meeting called for that purpose, and the vacancy in the Board caused by any such removal may be filled by the Developer until such time as all Lots have been sold to Owners other than Developer and in that event by the members at such meeting or at any subsequent meeting in the manner prescribed in the By-Laws for the filling of vacancies on the Board.

SEVENTH: The address of the Association's initial registered office is 2700 Highway 280 South, Suite 325, Birmingham, Alabama 35223, and the name of its initial registered agent is Billy D. Eddleman, with the same address.

EIGHTH: The Association shall have the right to indemnify each person who shall serve as a director, officer, employee, or agent of the Association, or shall serve at the request of the Association in a similar capacity with another corporation, joint venture, trust, or other enterprise, to the extent to which this Association is granted the power to so indemnify such persons by any and every statute of the State of Alabama or act of the Legislature of the State of Alabama.

NINTH: No contract or other transaction between the Association and any person, firm, association or corporation and no other act of the Association shall, in the absence of fraud, be invalidated or in any way affected by the fact that any of the directors or the Association are directly or indirectly, pecuniarily or otherwise interested in such contract, transaction or other act, or related to or interested in (either as director, stockholder, officer, employee, member or otherwise) such person, firm, association or corporation. Any director of the Association individually, or any firm or association of which any director may be a member of, may be a party to, or may be pecuniarily or otherwise interested in, any contract or transaction of the Association, provided that the fact that he, individually, or such firm or association, is so interested, shall be disclosed or known to the Board of Directors or a majority of the members thereof as shall be present at any meeting of the Board of Directors, or of any committee of directors having the powers of the full Board, at

which action upon any such contract, transaction or other act is taken; and if such fact shall be so disclosed or known, any director of the Association so related or otherwise interested may be counted in determining the presence of a quorum at any meeting of the Board of Directors, or of such committee, at which action upon any such contract, transaction or act shall be taken, and may vote with respect to such action with like force and effect as if he were not so related or interested. Any director of the Association may vote upon any contract or other transaction between the Association and any affiliated corporation without regard to the fact that he is also a director of such affiliated corporation.

TENTH: A. Upon dissolution of the Association, all of its assets remaining after provision for creditors and payment of all costs and expenses of such dissolution shall be distributed in the following manner:

1. Real property contributed to the Association without the receipt of other than nominal consideration by Developer (or its predecessor in interest) shall be returned to Developer, unless it refuses to accept the conveyance (in whole or in part).

2. Remaining assets shall be distributed among the members, subject to the limitations set forth below, as tenants in common, each members' share of the assets to be determined in accordance with its voting rights.

B. Dissolution of the Association shall be accomplished as set forth in the Act.

ELEVENTH: The Association reserves the right to amend, alter, change or repeal any provision contained in these Articles in the manner now or hereafter provided by law, and all rights conferred upon officers and directors herein are granted subject to this reservation.

TWELFTH: The name and address of each incorporator is:

<u>NAME</u>	<u>ADDRESS</u>
M. Glenn Perry, Jr.	3000 SouthTrust Tower Birmingham, Alabama 35203

WHEREFORE, the incorporator files this, its Articles of Incorporation, and tenders to the Probate Judge of Jefferson County, Alabama, the lawful fees and charges, and pray that these Articles may be examined and approved, and that the Association may be deemed to be incorporated for the purposes herein set out.

IN WITNESS WHEREOF, the undersigned incorporator has hereunto subscribed his signature to these Articles of Incorporation this 13th day of September, 1989.

M. Glenn Perry, Jr.
M. Glenn Perry, Jr.
Incorporator

BOOK 263 PAGE 584

BOOK 263 PAGE 585

State of Alabama
Jefferson County

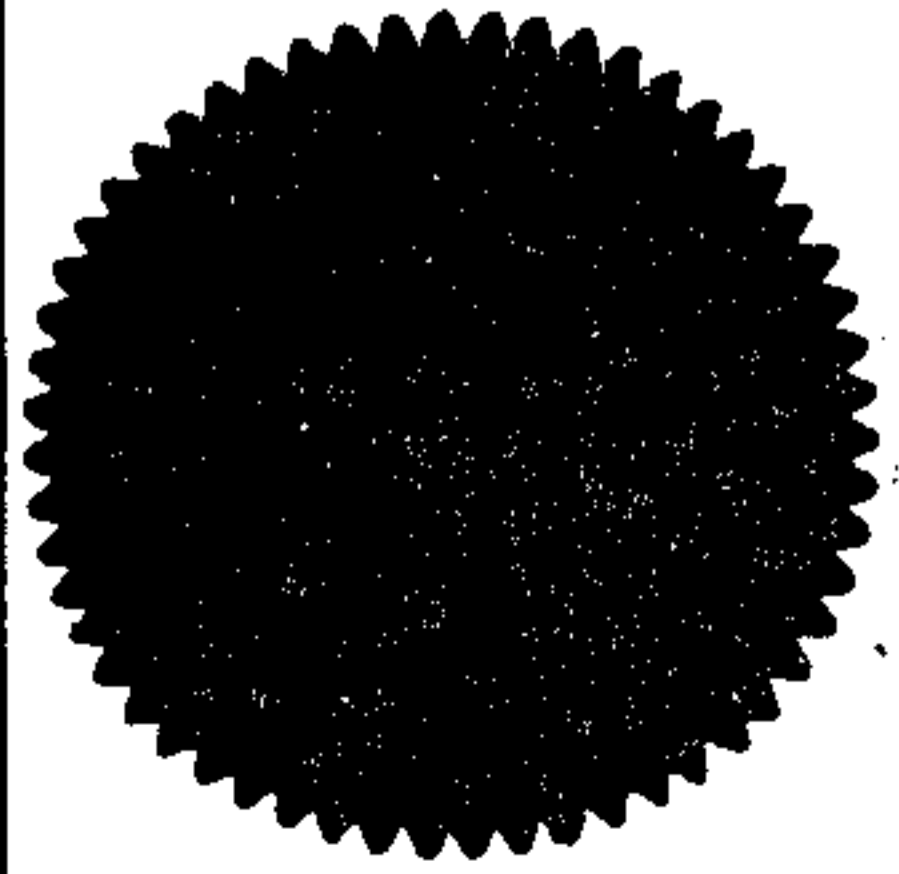
CERTIFICATE OF INCORPORATION
OF
THE MAGNOLIAS AT BROOK HIGHLAND HOMEOWNERS ASSN., INC.

The undersigned, as Judge of Probate of Jefferson County,
State of Alabama, hereby certifies that Articles of
INCORPORATION

duly signed and verified pursuant to the provisions of Alabama
NONPROFIT Corporation Act, have been received in this office
and are found to conform to law.

Accordingly the undersigned, as such Judge of Probate, and by
virtue of the authority vested in him by law, hereby, issues this
Certificate of INCORPORATION
of THE MAGNOLIAS AT BROOK HIGHLAND HOMEOWNERS ASSN., INC.
and attaches hereto a copy of the Articles of
INCORPORATION

Given Under My Hand and Official Seal on this the 13TH
day of SEPTEMBER, 19 89.




Judge of Probate

EXHIBIT B

BY-LAWS
OF
THE MAGNOLIAS AT BROOK HIGHLAND
HOMEOWNERS' ASSOCIATION, INC.

ARTICLE I

THE ASSOCIATION

Section 1. Identity. These are the By-Laws of The Magnolias at Brook Highland Homeowners' Association, Inc., a nonprofit corporation (the "Association"), which was formed under the Alabama Nonprofit Corporation Act [Code of Alabama 1975 §§10-3A-1 et seq.] by filing the Articles of Incorporation of the Association (the "Articles") with the Office of the Judge of Probate of Jefferson County, Alabama, on September 13, 1989. The purposes for which the Association has been organized are set forth in the Articles. The provisions of these By-Laws are expressly subject to the terms, provisions, covenants and conditions contained in the Articles and the Declaration of Protective Covenants for The Magnolias at Brook Highland, a Residential Subdivision (hereinafter referred to as the "Declaration") as filed, or to be filed, with the Office of the Judge of Probate of Shelby County, Alabama, to which these By-Laws are attached as Exhibit B. The terms "Common Area," "Developer," "Institutional Mortgagee," "Lot," "Owner," "Property" and any other capitalized term used in these By-Laws are used with the definitions given those terms in the Declaration.

Section 2. Principal Office. The principal office of the Association in the State of Alabama shall be located in the City of Birmingham, County of Jefferson. The Association may have such other offices, either within or without the State of Alabama, as the Board of Directors may designate or as the business of the Association may require from time to time.

Section 3. Registered Office. The registered office of the Association, required by the Alabama Nonprofit Corporation Act to be maintained in the State of Alabama, may be, but need not be, identical with the principal office in the State of Alabama, and the address of the registered office may be changed from time to time by the Board of Directors.

ARTICLE II

MEMBERSHIP

Section 1. Membership. The Members of the Association shall consist of all Owners (as defined in the Declaration), and the membership shall be appurtenant to, and may not be separated from,

ownership of any Lot (as defined in the Declaration). Membership shall attach automatically upon the acceptance of delivery of the instrument of transfer of such ownership interest, provided that such instrument is promptly recorded in the Office of the Judge of Probate of Shelby County, Alabama, and a true copy of such recorded instrument is promptly delivered to the Association. Membership shall terminate automatically upon the tendering of delivery of an instrument of transfer of such ownership interest (provided such tender is accepted) or upon such ownership interest being divested in some other manner.

Section 2. Annual Meeting. The annual meeting of the Membership shall be held on the third Tuesday in the month of September in each year, beginning with the year 1990 at the hour of 10:00 a.m., or at such other time on such other day within such month as shall be fixed by the Board of Directors, for the purpose of electing directors and for the transaction of such other business as may come before the meeting. If the day fixed for the annual meeting shall be a legal holiday in the State of Alabama, such meeting shall be held on the next succeeding business day. If the election of directors shall not be held on the day designated herein for any annual meeting of the membership, or at any adjournment thereof, the Board of Directors shall cause the election to be held at a special meeting of the Membership as soon thereafter as conveniently may be.

Section 3. Special Meetings. Special meetings of the Membership, for any purpose or purposes, unless otherwise prescribed by statute, may be called by the President or by the Board of Directors and shall be called by the President or the Secretary at the request of owners of one half (1/2) or more of the total Lots of the Property.

Section 4. Place of Meeting. The Board of Directors may designate any place, within or without the State of Alabama, as the place of meeting for any annual meeting or for any special meeting of the Membership. If no designation is made, or if a special meeting is otherwise called, the place of the meeting shall be the principal office of the Association in the State of Alabama.

Section 5. Notice of Meeting. Written or printed notice stating the place, day and hour of the meeting and, in case of a special meeting, or of a meeting which is required by statute to be held for any special purpose, or of an annual meeting at which special action is to be taken, the purpose or purposes for which the meeting is called, or the special action which is proposed to be taken, shall, unless otherwise prescribed by statute, be delivered not less than ten (10) nor more than fifty (50) days before the date of the meeting, either personally or by mail, by or at the direction of the President, the Secretary, or the persons calling the meeting, to each member of record entitled to

vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the member at his address as it appears on the records of the Association, with postage thereon prepaid.

Section 6. Fixing of Record Date. The Board of Directors may fix in advance a date as the record date for the purpose of determining the members entitled to notice of or to vote at any meeting of members or any adjournment thereof, or for any other proper purpose, such date in any case to be not more than fifty (50) days and, in case of a meeting of the membership, not less than ten (10) days prior to the date on which the particular action, requiring such determination of members, is to be taken. If no record date is fixed for the determination of members entitled to notice of or to vote at a meeting of the membership, the date on which notice of the meeting is mailed shall be the record date for such determination of members. When a determination of members entitled to vote at any meeting of the membership has been made as provided in this section, such determination shall apply to any adjournment thereof.

Section 7. Voting Lists. The officer or agent having charge of the records of members of the Association shall make, at least ten (10) days before each meeting of the Membership, a complete list of the members entitled to vote at such meeting, or any adjournment thereof, arranged in alphabetical order, with the address of each member, which list, for a period of ten (10) days prior to such meeting, shall be kept on file at the principal office of the Association and shall be subject to inspection by any member making written request therefor at any time during usual business hours. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any member during the whole time of the meeting.

Section 8. Quorum. The presence at any meeting of the Membership of the members entitled to cast at least 10% of the votes in the Association, represented in person or by proxy, shall constitute a quorum. If a quorum is not present at any meeting, a majority of the members so represented may adjourn the meeting from time to time without further notice. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally notified. The members present or represented at a meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum.

Section 9. Majority Vote. The vote of members entitled to cast a majority of the votes represented at a meeting of the Membership at which a quorum is present shall be the act of the members of the Association, unless the vote of a greater number is required by law, the Declaration, the Articles, or these By-Laws.

BOOK 263 PAGE 589

Section 10. Proxies. At all meetings of the Membership, a member may vote in person or by proxy executed in writing by the member or by his duly authorized attorney in fact. Such proxy shall be filed with the Secretary of the Association before or at the time of the meeting. No proxy shall be valid after ninety days from the date of its execution, unless otherwise provided in the proxy.

Section 11. Voting Rights. Subject to the restrictions hereinafter set forth, each member shall be entitled to one (1) vote for each Lot in which he holds the interest required for membership. When one or more persons holds such interest, all such persons may be members, but in no event shall more than one vote be cast with respect to any Lot. If an Owner is a corporation or other entity, the person entitled to cast the vote for the Lot shall be designated by a certificate duly executed by such corporation or other entity and filed with the Secretary of the Association. Such certificate shall be valid until revoked or until superceded by a subsequent certificate or a change in the ownership of the Lot concerned. A certificate designating the person entitled to cast the vote of a Lot may be revoked at any time by any Owner of a Lot. There shall be no fractional voting. The votes of an Owner of more than one Lot cannot be divided for any issue and must be voted as a whole. Except where otherwise required under the provisions of the Declaration, the Articles or these By-Laws, the affirmative vote of Owners who own a majority of the total Lots within the Property which is represented at any meeting of members duly called, and at which a quorum is present, shall be binding upon the members. Voting may take place by proxy executed and delivered in the manner set forth herein.

Section 12. Informal Action by Members. Any action required to be taken at a meeting of the membership, or any other action which may be taken at a meeting of the membership, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the members entitled to vote with respect to the subject matter thereof.

ARTICLE III

BOARD OF DIRECTORS

Section 1. General Powers. The business and affairs of the Association shall be managed by or under the direction of its Board of Directors.

Section 2. Number, Tenure and Qualifications. The number of directors of the Association shall consist of three (3) directors.

Section 3. Election of Directors.

(a) Election of directors shall be held at the annual meeting of the membership. The election shall be by secret ballot (unless dispensed with by unanimous consent) and by a plurality of the votes cast. The Owner of each Lot shall be entitled to cast the number of votes fixed by Section 11 of Article II for each of as many nominees as there are vacancies to be filled at the time of election. There shall be no cumulative voting.

(b) Notwithstanding the provisions of subparagraph (a) above, the Developer (as defined in the Declaration), its successors and assigns, shall elect the members of the Board of Directors of the Association, and in the event of vacancies, the Developer shall fill vacancies, until all Lots are owned by Owners other than the Developer or until the Developer elects, at its option, to terminate control of the Association. Within sixty (60) days after the date of termination of control of the Association by the Developer, the Board of Directors shall call and give not less than ten (10) nor more than thirty (30) days notice of a special meeting of the Membership for the purpose of electing the members of the Board of Directors.

Section 4. Regular Meetings. A regular meeting of the Board of Directors shall be held without other notice than this By-Law immediately after, and at the same place as, the annual meeting of the Membership, provided, however, any such regular meeting may be held at any other time or place which shall be specified in a notice given as hereinafter provided for special meetings, or in a consent and waiver of notice thereof, signed by all directors. The Board of Directors may provide, by resolution, the time and place, within or without the State of Alabama, for the holding of additional regular meetings without other notice than such resolution.

Section 5. Special Meetings. Special meetings of the Board of Directors may be called by or at the request of the President or any two directors.

Section 6. Notice. Notice of any special meeting shall be given at least three (3) days previously thereto by written notice delivered personally or mailed to each director at his business address, or by telegram. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail so addressed, with postage thereon prepaid. If notice be given by telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company. Any director may waive notice of any meeting. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business

to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting.

Section 7. Quorum. A majority of the number of directors fixed by Section 2 of this Article III shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, but if less than such majority is present at a meeting, a majority of the directors present may adjourn the meeting from time to time without further notice.

If a quorum is present when the meeting is convened, the directors present may continue to do business, until adjournment, notwithstanding the withdrawal of enough directors to leave less than a quorum present, or the refusal of any director present to vote.

Section 8. Manner of Acting. The act of the majority of a majority of the directors present at a meeting at which a quorum is present is necessary to constitute the act of the Board of Directors unless a greater number is required under the Alabama Nonprofit Corporation Act.

Section 9. Action Without a Meeting. Any action that may be taken by the Board of Directors at a meeting may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors.

Section 10. Vacancies. Subject to the provisions of subparagraph (b) of Section 3 of this Article III, any vacancy occurring in the Board of Directors and any directorship to be filled by reason of an increase in the number of directors may be filled by a majority of the remaining directors. A director elected or appointed, as the case may be, shall be elected or appointed for the unexpired term of his predecessor in office.

Section 11. Compensation. By resolution of the Board of Directors, the directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors, and may be paid a fixed sum for attendance at each meeting of the Board of Directors or a stated salary as a director or both. No such payment shall preclude any director from serving the Association in any other capacity and receiving compensation therefor.

Section 12. Committees. The Board of Directors may, by resolution or resolutions, passed by a majority of the whole Board, designate one or more committees, each of which shall consist of two or more directors and which to the extent provided in said resolution or resolutions or in the By-Laws of the Association shall have and may exercise all of the powers of the Board of Directors in the management of the activities and affairs of the Association and may have power to authorize the seal of the

Association to be affixed to all papers which may require it; except that no such committee shall have the authority of the Board of Directors in reference to amending, altering or repealing the By-Laws; electing, appointing or removing any member of any such committee or any director or officer of the Association; amending the Articles, restating the Articles, adopting a plan of merger or adopting a plan of consolidation with another corporation; authorizing the sale, lease, exchange, or mortgage of all or substantially all of the property and assets of the Association; authorizing the voluntary dissolution of the Association or revoking proceedings therefor; adopting a plan for the distribution of assets of the Association; or amending, altering or repealing any action or resolution of the Board of Directors which by its terms provides that it shall not be amended, altered, or repealed by such committee. The designation of such committee or committees or the delegation thereto of authority shall not operate to relieve the Board of Directors or any individual director of any responsibility imposed upon it or him by law.

Section 13. Resignations. Any director of the Association may resign at any time either by oral tender of resignation at any meeting of the Board or by giving written notice thereof to the Secretary of the Association. Such resignation shall take effect at the time specified therefor; and the acceptance of such resignation shall not be necessary to make it effective.

Section 14. Place of Meeting. The Board of Directors may designate any place within or without the State of Alabama as the place of meeting for any regular or special meeting of the Board of Directors.

Section 15. Presumption of Assent. A director of the Association who is present at a meeting of the Board of Directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the Secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Association immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

ARTICLE IV

OFFICERS

Section 1. Number. The officers of the Association shall be a President, one or more Vice President(s) (the number thereof to be determined by the Board of Directors), a Secretary, and a

Treasurer, each of whom shall be elected by the Board of Directors. Such other officers and assistant officers as may be deemed necessary may be elected or appointed by the Board of Directors. Any two or more offices may be held by the same person, except the President and Secretary. The failure of the Board of Directors to elect any officer other than a President and a Secretary shall not constitute a violation of these By-Laws.

Section 2. Election and Term of Office. The officers of the Association to be elected by the Board of Directors shall be elected annually by the Board of Directors at the first meeting of the Board of Directors held after each annual meeting of the Membership. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as conveniently may be. Each officer shall hold office until his successor shall have been duly elected and shall have qualified or until his death or until he shall have resigned or shall have been removed in the manner hereinafter provided.

Section 3. Removal. Any officer or agent elected or appointed by the Board of Directors may be removed at any time, by the affirmative vote of the Board of Directors, whenever in their judgment the best interests of the Association will be served thereby. Any such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer shall not of itself create any contract rights in favor of such officer.

Section 4. Vacancies. A vacancy in any office elected or appointed by the Board of Directors because of death, resignation, removal, disqualification or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

Section 5. President. The President shall be the chief executive officer of the Association and, subject to the control of the Board of Directors, shall in general supervise and control all of the business and affairs of the Association. He shall preside at all meetings of the Membership. He may sign, with the Secretary or an Assistant Secretary, any deeds, mortgages, bonds, contracts or other instruments which the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by these By-Laws to some other officer or agent of the Association, or shall be required by law to be otherwise signed or executed; and in general shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board of Directors from time to time.

Section 6. Vice President. In the absence of the president or in the event of his death, inability or refusal to act, the Vice President (or in the event there be more than one Vice President, the Vice Presidents in the order designated at the time

of their election, or in the absence of any designation, then in the order of their election) shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. Any Vice President shall perform such other duties as from time to time may be assigned to him by the President or by the Board of Directors.

Section 7. Secretary. The Secretary shall: (a) keep the minutes of the proceedings of the Members and of the Board of Directors in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these By-Laws or as required by law; (c) be custodian of the corporate records and of the seal of the Association and see that the seal of the Association is affixed to all documents the execution of which on behalf of the Association under its seal is duly authorized; (d) keep a register of the post office address of each member which shall be furnished to the Secretary by such member; (e) have general charge of the records of the members of the Association; and (f) in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him by the President or by the Board of Directors.

Section 8. Treasurer. The Treasurer shall: (a) have charge and custody of and be responsible for all funds and securities of the Association; (b) receive and give receipts for monies due and payable to the Association from any source whatsoever, and deposit all such monies in the name of the Association in such banks, trust companies or other depositories as shall be selected in accordance with the provisions of Article V of these By-Laws; and (c) in general perform all of the duties as from time to time may be assigned to him by the President or by the Board of Directors. If required by the Board of Directors, the Treasurer shall give a bond for the faithful discharge of his duties in such sum and with such surety or sureties as the Board of Directors shall determine.

Section 9. Assistant Secretaries and Assistant Treasurers. The Assistant Secretaries and Assistant Treasurers, in general, shall perform such duties as shall be assigned to them by the Secretary or the Treasurer, respectively, or by the President or the Board of Directors. The Assistant Treasurers shall respectively, if required by the Board of Directors, give bonds for the faithful discharge of their duties in such sums and with such sureties as the Board of Directors shall determine.

Section 10. Salaries. The salaries of the officers shall be fixed from time to time by the Board of Directors and no officer shall be prevented from receiving such salary by reason of the fact that he is also a director of the Association.

ARTICLE V

CONTRACTS, LOANS, CHECKS AND DEPOSITS

Section 1. Contracts. The Board of Directors may authorize any officer or officers, agent or agents to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association, and such authority may be general or confined to specific instances.

Section 2. Loans.

(a) No loans shall be contracted on behalf of the Association and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the Board of Directors. Such authority may be general or confined to specific instances.

(b) No loans shall be made by the Association to its directors or officers. Any director or officer who assents to or participates in the making of such loan shall be liable to the Association for the amount of such loan until the repayment thereof.

Section 3. Checks, Drafts, Etc. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Association, shall be signed by such officer or officers, agent or agents of the Association and in such manner as shall from time to time be determined by resolution of the Board of Directors.

Section 4. Deposits. All funds of the Association not otherwise employed shall be deposited from time to time to the credit of the Association in such banks, trust companies or other depositories as the Board of Directors may select.

Section 5. Proxies. Unless otherwise provided by resolution of the Board of Directors, the President may from time to time appoint an attorney or agent of the Association, in the name and on behalf of the Association, to cast the votes which the Association may be entitled to cast as the holder of stock or other securities in any other corporation any of whose stock or other securities may be held by the Association, at meetings of the holders of the stock or other securities of such other corporation, or to consent in writing, in the name and on behalf of the Association, as such holder, to any action by such other corporation, and may instruct the person or persons so appointed as to the manner of casting such votes or giving such consent, and may execute or cause to be executed, in the name and on behalf of the Association and under its corporate seal or otherwise, all such

written proxies or other instruments as he may deem necessary or proper in the premises.

ARTICLE VI

BOOKS AND RECORDS

Section 1. Accounting. The Association shall keep correct and complete books and records of account and shall keep minutes of the proceedings of the members, Board of Directors and committees thereof and shall keep at its registered or principal office in Alabama a record of the names and addresses of members entitled to vote, directors and officers. The accounting records shall be maintained in accordance with generally accepted accounting principles. All books and records of the Association shall be open to inspection by the members or their authorized representatives for any proper purpose at any reasonable time.

Section 2. Budget. The Board of Directors shall adopt a budget for each calendar year that shall include the estimated funds required to defray the Common Expenses (as defined in the Declaration) and to provide and maintain funds for the foregoing accounts and reserves according to good accounting practices. Copies of the budget and proposed assessments shall be transmitted to each member on or before December 1 preceding the year for which the budget is made. If the budget is amended substantially, a copy of the amended budget shall be furnished to each member.

Section 3. Assessments. Assessments against the members as provided in the Declaration shall be made for the calendar year annually in advance on or before December 31, preceding the year for which the assessments are made. Such assessments shall be due in annual, quarterly or monthly installments, as may be determined by the Board of Directors of the Association. In the event the annual assessment proves to be insufficient, the budget and assessments may be amended at any time by the Board of Directors.

Section 4. Assessments for Emergencies. Assessments for Common Expenses for emergencies that cannot be paid from the annual assessments for Common Expenses shall be made only after notice of the need for such is given to the members concerned, and it shall be due thirty (30) days after such notice in such manner as the Board of Directors of the Association may require in the notice of assessment.

Section 5. Bonds. Fidelity bonds shall be required by the Board of Directors from all persons handling or responsible for Association funds. The amount of such bonds shall be determined by the Board of Directors, but shall not be less than three times the amount of the total annual assessments against members for

Common Expenses. The premiums of such bonds shall be paid by the Association.

ARTICLE VII

SEAL

The Board of Directors shall provide a corporate seal which shall be circular in form and shall have inscribed thereon the name of the Association and the state of incorporation and such other words as the Board of Directors may prescribe.

ARTICLE VIII

WAIVER OF NOTICE

Whenever any notice is required to be given to any member or director of the Association under the provisions of these By-Laws, the Articles of Incorporation, the Declaration, the provisions of the Alabama Nonprofit Corporation Act, and any act amendatory thereof, supplementary thereto or substituted therefor, or the Alabama Constitution, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

ARTICLE IX

FISCAL YEAR

The fiscal year of the Association shall be fixed by resolution of the Board of Directors.

ARTICLE X

INDEMNIFICATION

Section 1. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association) by reason of the fact that he is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably in-

598
PAGE
263
BOOK

curred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

Section 2. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association, as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the Association unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

Section 3.

(a) To the extent that a director, officer, employee or agent of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Sections 1 and 2, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

(b) Any indemnification under Sections 1 and 2 (unless ordered by a court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of

conduct set forth in Sections 1 and 2. Such determination shall be made (i) by the Board of Directors by a majority vote of directors who were not parties to such action, suit or proceeding, or (ii) if disinterested directors so direct, by independent legal counsel in a written opinion, or (iii) by the members.

(c) Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding as authorized by the Board of Directors in the specific case upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Association as authorized in this section.

(d) The indemnification provided by this section shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any by-law, agreement, vote of members or disinterested director or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

ARTICLE XI

AMENDMENT

The By-Laws may be amended, altered or repealed by the Developer until such time as all Lots are owned by Owners other than the Developer or until the Developer elects, at its option, to terminate control of the Association. Upon termination of control, the By-Laws may be amended by the members at any regular or special meeting upon the affirmative vote of the Owners of not less than two-thirds (2/3) of the total Lots of the Property.

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

89 OCT 30 AM 8:11

Thomas A. Spawden, Jr.
JUDGE OF PROBATE

1. Deed Tax -----	\$	_____
2. Mtg. Tax -----	\$	_____
3. Recording Fee -----	\$	122.50
4. _____	\$	3.00
5. _____	\$	_____
6. _____	\$	1.00
- 14 Total -----	\$	126.50

