

This instrument was prepared by: Jack P. Stephenson, Jr.
420 N. 20th Street, Suite 3000
Birmingham, Alabama 35203

STATE OF ALABAMA)
COUNTY OF SHELBY)

SUPPLEMENTARY DECLARATION OF
PROTECTIVE COVENANTS OF
BROOK HIGHLAND, A RESIDENTIAL SUBDIVISION
ELEVENTH SECTOR, FIRST PHASE

KNOW ALL MEN BY THESE PRESENTS THAT,

WHEREAS, Eddleman & Associates, an Alabama general partnership has previously filed a Declaration of Protective Covenants and Agreements in the Probate Office of Shelby County, Alabama, in Real 194, at page 254, (the "Original Declaration") for the benefit of certain real property situated in Shelby County, Alabama, which is part of a residential subdivision known as Brook Highland, A Residential Subdivision, and which is more particularly described in the Plats of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Twentieth, Ninth, Tenth and Twenty-First Sectors of Brook Highland, as respectively recorded in Map Book 12, at pages 62 A & B, 63 A & B, and 64 A & B, Map Book 13 at pages 12, 36 A & B, and 99 A & B, Map Book 14 at page 71 and 83 A & B, Map Book 15 at pages 50 A & B, 105 and 106, Map Book 16 at pages 76 and 96, Map Book 16 at page 148, Map Book 17, page 63, and Map Book 17, page 108, Map Book 18, pages 36A and B, Map Book 18, pages 52A and B, and Map Book 18, page 129, in the Probate Office of Shelby County, Alabama;

Inst # 1995-01043

234456.1

Eddleman Properties Inc
2700 Hwy 280 East
Suite 325
Birmingham AL 35223

01/12/1995-01043
10:00 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
010 MCD 33.00

WHEREAS, AmSouth Bank of Alabama as Ancillary Trustee for NationsBank of North Carolina, N.A. as Trustee for the Public Employees Retirement System of Ohio (hereinafter referred to as "Declarant") is the owner of additional real property (the "Subject Property") situated in Shelby County, Alabama, which is proposed to be developed as part of Brook Highland, and which is more particularly described in the Plat of Brook Highland Eleventh Sector, First Phase, as recorded in Map Book 19 at page 68 in the Probate Office of Shelby County, Alabama;

WHEREAS, the Declarant desires to submit the Subject Property to the Original Declaration in accordance with and pursuant to Section 2.02 of the Original Declaration which permits the owner of any property, with the approval in writing of the Association (as defined in the Original Declaration), to submit such property to the Original Declaration by filing a Supplementary Declaration to that effect in the Office of the Judge of Probate of Shelby County, Alabama;

NOW THEREFORE, the Declarant, together with Brook Highland Homeowners' Association, Inc. (the "Association") do, upon the recording hereof, declare and make the Subject Property and any portion thereof subject to the covenants, conditions, restrictions, uses, limitations and affirmative obligations of the Original Declaration, as heretofore amended and as amended hereby, all of which are declared to be in furtherance of a plan for the use and improvement of the Subject Property in a desirable and uniform manner suitable in architectural design and for the enforcement of

such uniform standards and the maintenance and preservation of the common amenities within the property subject to the Original Declaration.

ARTICLE I

The Declarant hereby reaffirms and restates the terms and provisions of the Original Declaration as amended and/or supplemented by the instruments recorded in Book 228 at Page 882, Book 228 at page 886, Book 255 at page 131, Real 263, page 604, Real 311, page 78, Real 317, page 767, Real 353, page 969, Real 380, page 623, and Real 380, page 627, and Instrument No. 1992-16104, Instrument No. 1992-20484, Instrument No. 1993-01877, Instrument No. 1993-18798, Instrument No. 1993-31073, Instrument No. 1994-06901, Instrument No. 1994-09886 and Instrument No. 1994-29497, in the Probate Office of Shelby County, Alabama, in their entirety without any change whatsoever, except as follows:

1. The legal description of the property subject to the Original Declaration in Section 2.01 thereof is hereby amended to include the Subject Property.

2. The Original Declaration is hereby amended in the following respects with respect to the Subject Property only and such amendments shall apply only with respect thereto.

- (a) Article III of the Original Declaration, as amended by Instrument No. 1994-06901 in the Probate Office of Shelby County, Alabama, is hereby further amended to provide an easement on the Subject Property to implement the habitat plan for the Red Cockaded Woodpecker as approved by the Association or the Developer by deleting Section 3.06 thereof in its entirety and substituting in lieu thereof the following:

3.06 Endangered Species Easement. Developer, on behalf of all present and future Owners of the Ninth Sector of Brook Highland according to the plat thereof recorded in Map Book 17, Page 63, in the Probate Office of Shelby County, Alabama (the "Ninth Sector"), and the Tenth Sector, First Phase, of Brook Highland according to the plat thereof recorded in Map Book 17, page 108, in the Probate Office of Shelby County, Alabama (the "First Phase of the Tenth Sector"), and the Tenth Sector, Second Phase of Brook Highland according to the plat thereof recorded in Map Book 18, page 36A and B in the Probate Office of Shelby County, Alabama (the "Second Phase of the Tenth Sector"), and the Eleventh Sector, First Phase of Brook Highland according to the plat thereof recorded in Map Book ____, page ____, in the Probate Office of Shelby County, Alabama (the "First Phase of the Eleventh Sector"), or any portion thereof, hereby declares, reserves and grants to the Developer and the Association an easement over, through and across the Ninth Sector, the First Phase of the Tenth Sector, the Second Phase of the Tenth Sector, and the First Phase of the Eleventh Sector, including all Lots contained therein, for purposes of: (i) installing in trees located within the Ninth Sector, the First Phase of the Tenth Sector, the Second Phase of the Tenth Sector, and the First Phase of the Eleventh Sector, artificial cavities for the Red Cockaded Woodpecker, an endangered species, and releasing Red Cockaded Woodpeckers in connection with the installation of such artificial cavities; (ii) repairing and maintaining such artificial cavities; (iii) inspecting and surveying the Lots within the Ninth Sector, the First Phase of the Tenth Sector, the Second Phase of the Tenth Sector and the First Phase of the Eleventh Sector, to determine compliance with any habitat conservation plan approved by the Association or the Developer in accordance with the requirements of the U.S. Fish and Wildlife Service and the Environmental Protection Agency; and (iv) taking any action reasonably necessary to comply with such approved habitat conservation plan, including, but not limited to planting trees and clearing hardwood understory and midstory; provided, however, that none of the aforesaid uses shall

unreasonably interfere with the use of any Lot for a residential dwelling nor unreasonably detract from the architectural design of the structures on any Lot. In addition, Developer, on behalf of all present and future Owners of the Ninth Sector, the First Phase of the Tenth Sector, the Second Phase of the Tenth Sector, and the First Phase of the Eleventh Sector, or any portion thereof, hereby declares and grants to the U.S. Fish and Wildlife Service, its employees, agents and representatives, an easement over, through and across the Ninth Sector, the First Phase of the Tenth Sector, the Second Phase of the Tenth Sector, and the First Phase of the Eleventh Sector, including the Lots, to enter the Ninth Sector, the First Phase of the Tenth Sector, the Second Phase of the Tenth Sector and the First Phase of the Eleventh Sector at any reasonable time for the purpose of inspecting the same and developing and maintaining the habitat conservation plan for the protection of the Red Cockaded Woodpecker as approved by the Association or the Developer.

(b) Article VI, Section 6.03, of the Original Declaration, as amended by Instrument No. 1994-09886 in the Probate Office of Shelby County, Alabama, is hereby further amended with regard to the Subject Property and with respect to any real property which may hereafter be submitted to the Original Declaration as heretofore amended and as amended hereby to provide a procedure for compliance with the storm water drainage and other requirements of the General Permit issued by the Alabama Department of Environmental Management in favor of the Developer by deleting subparagraph (c) thereto in its entirety and substituting in lieu thereof the following:

(c) To require submission to the ARB of an Erosion Control Plan to be implemented with respect to any Lot becoming subject to the Original Declaration on or after the date hereof by the Owner or the Owner's builder or contractor, including any changes, modifications or revisions of such Erosion Control Plan. Any such Erosion Control Plan, to be approved by the ARB, must provide that gravel be placed in the driveway of the Lots during the construction period and that hay and silt fences be utilized during construction to minimize erosion. Such

Erosion Control Plan must comply with all terms and conditions of any applicable General Permit issued by the Alabama Department of Environmental Management and made available to the Developer regarding storm water runoff from construction, excavation, land clearing and other land disturbance activities within the Property. Approval of the Erosion Control Plan by the ARB shall be granted or denied within the same time periods and in the same manner as set forth in paragraph (d) below.

Paragraphs (c) through (f) of Section 6.03 of the Original Declaration shall be renumbered as paragraphs (d) through (g), respectively.

(c) Article VII of the Original Declaration, as amended by Instrument No. 1994-06901 in the Probate Office of Shelby County, Alabama, is hereby further amended with regard to the Ninth Sector, the First Phase of the Tenth Sector, the Second Phase of the Tenth Sector and the First Phase of the Eleventh Sector to add covenants relating to the protection of the foraging area for the Red Cockaded Woodpecker by deleting Section 7.18 thereof in its entirety and substituting in lieu thereof the following:

7.18 Endangered Species Protection.
The Ninth Sector, the First Phase of the Tenth Sector, the Second Phase of the Tenth Sector and the First Phase of the Eleventh Sector is located in a foraging area for the Red Cockaded Woodpecker, which has been designated as an endangered species by the U.S. Fish and Wildlife Service. In order to protect the foraging area, each Owner of any Lot within the Ninth Sector, the First Phase of the Tenth Sector, the Second Phase of the Tenth Sector and the First Phase of the Eleventh Sector shall comply with the following covenants:

(a) No pine trees greater than six inches in calibre dbh located on any Lot in the Ninth Sector, the First Phase of the Tenth Sector, the Second Phase of the Tenth Sector and the First Phase of the Eleventh Sector shall be removed or trimmed without the prior written approval of the ARB. If any pine trees having a calibre dbh greater than six inches are removed from a Lot in the Ninth

Sector, the First Phase of the Tenth Sector, the Second Phase of the Tenth Sector and the First Phase of the Eleventh Sector (with ARB approval), the Owner of such Lot shall promptly replace each removed pine tree by planting a long leaf pine tree with a minimum height of six feet. The landscape plan for any Lot in the Ninth Sector, the First Phase of the Tenth Sector, the Second Phase of the Tenth Sector and the First Phase of the Eleventh Sector, including the size and type of any tree to be planted on such Lot, shall be subject to ARB approval.

(b) If any artificial cavity for the Red Cockaded Woodpecker is installed in a tree on any Lot within the Ninth Sector, the First Phase of the Tenth Sector, the Second Phase of the Tenth Sector and the First Phase of the Eleventh Sector, or if any Lot Owner in the Ninth Sector, the First Phase of the Tenth Sector, the Second Phase of the Tenth Sector and the First Phase of the Eleventh Sector is notified in writing by the Developer, the Association or the ARB that a natural cavity for the Red Cockaded Woodpecker has been located in a tree on such Lot, such Lot Owner shall not cut any pine tree or plant any hardwood tree within 200 feet of such natural or artificial cavity unless approved in writing by the ARB; provided, however, that the restrictions set forth in this paragraph 7.18(b) shall not apply to any Lot in the Ninth Sector, the First Phase of the Tenth Sector, the Second Phase of the Tenth Sector and the First Phase of the Eleventh Sector if and to the extent application thereof would unreasonably interfere with the Owner's use and enjoyment of his or her Lot as a residential dwelling or unreasonably detract from the architectural design of the structures on any Lot.

(c) Prior to completion of construction of any residence on a Lot within the Ninth Sector, the First Phase of the Tenth Sector, the Second Phase of the Tenth Sector and the First Phase of the Eleventh Sector, the Owner of such Lot shall plant not less than five long leaf pine trees on such Lot with each tree having a minimum height of six feet.

(d) Each Owner of a Lot in the Ninth Sector, the First Phase of the Tenth Sector, the Second Phase of the Tenth Sector and the First Phase of the Eleventh Sector, by acceptance of a deed or other instrument of conveyance for a Lot, agrees to comply with all terms and provisions of a habitat conservation plan with respect to the Ninth Sector, the First Phase of the Tenth Sector, the Second Phase of the Tenth Sector and the First Phase of the Eleventh Sector as the same may be approved and adopted by the Association or the Developer in accordance with the requirements of the U.S. Fish and Wildlife Service and/or the Environmental Protection Agency; provided that any such plan or compliance therewith shall not unreasonably interfere with the Owner's use and enjoyment of his or her Lot as a residential dwelling nor unreasonably detract from the architectural design of the structures on any Lot. The Developer, or in the event that the Developer shall assign its rights and obligations with respect to the foraging area to the Association, then the Association, shall be authorized to negotiate and enter into such a plan on its own behalf and on behalf of the Owners of the Lots in the Ninth Sector, the First Phase of the Tenth Sector, the Second Phase of the Tenth Sector and the First Phase of the Eleventh Sector.

ARTICLE II

Declarant hereby declares that said provisions of the Original Declaration as so amended shall run with the land and be binding upon, and shall inure to the benefit of, the Subject Property and all parties having or acquiring any right, title or interest in and to the Subject Property or any part thereof, and their successors in interest.

ARTICLE III

The Association has joined in the execution of this Supplemental Declaration for the purpose of evidencing its written

approval of the submission of the Subject Property to the Original Declaration as herein provided and does hereby authorize the filing of this Supplemental Declaration with the Office of the Judge of Probate of Shelby County, Alabama.

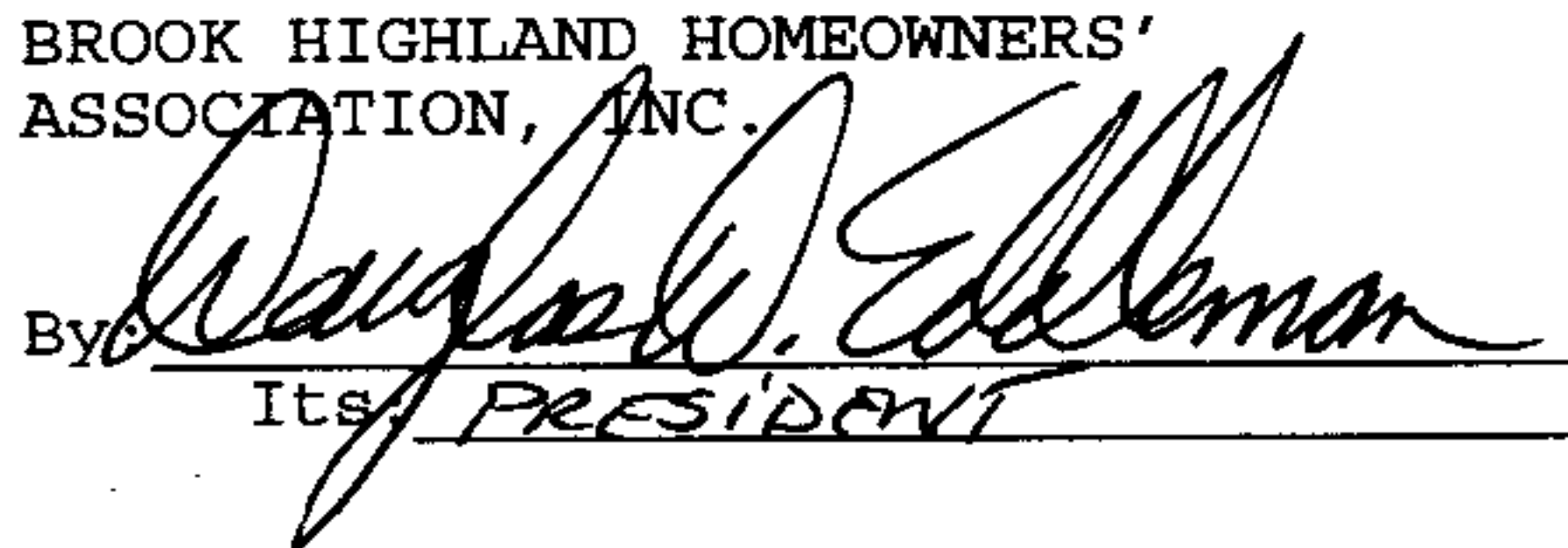
IN WITNESS WHEREOF, the undersigned have caused this Declaration to be executed as of the 19th day of December, 1994.

DECLARANT:

AMSOUTH BANK OF ALABAMA, as Ancillary Trustee for NationsBank of North Carolina N.A., as Trustee for the Public Employees Retirement System of Ohio

By: 
Its: Vice President, Trust Officer

BROOK HIGHLAND HOMEOWNERS' ASSOCIATION, INC.

By: 
Its: PRESIDENT

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that John A Bostwick, whose name as Vice President, Trust Officer of AmSouth Bank of Alabama, a state banking corporation, as Ancillary Trustee for NationsBank of North Carolina, N.A., as Trustee for the Public Employees Retirement System of Ohio, is signed to the foregoing Supplementary Declaration of Protective Covenants, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing Supplementary Declaration of Protective Covenants, he, as such officer and with full authority, executed the same voluntarily for and as the act of said state banking corporation acting in its capacity as Ancillary Trustee as aforesaid.

Given under my hand and official seal of office this 19th day
of December, 1994.

Ani Benfield
Notary Public
My Commission Expires: 4-21-97

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County in
said State hereby certify that Douglas D. Eddleman whose
name as President of Brook Highland Homeowners'
Association, Inc., an Alabama nonprofit corporation, is signed to
the foregoing Supplementary Declaration of Protective Covenants,
and who is known to me, acknowledged before me on this day that,
being informed of the contents of the Supplementary 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 19th
day of December, 1994.

Rebecca K. Rosato
Notary Public
My Commission Expires: 2/3/97

Inst # 1995-01043