

Drawn by and after recording return to:  
Moore & Van Allen PLLC (HHH)  
100 North Tryon Street, Floor 47  
Charlotte, North Carolina 28202-4003

**STATE OF ALABAMA**

**COUNTY OF SHELBY**

**ASSIGNMENT AND ASSUMPTION OF RIGHTS, DUTIES AND OBLIGATIONS  
UNDER DECLARATION, WATERSHED COVENANTS  
AND RESTRICTIVE AGREEMENTS**

**THIS ASSIGNMENT AND ASSUMPTION OF RIGHTS, DUTIES AND OBLIGATIONS UNDER DECLARATION, WATERSHED COVENANTS AND RESTRICTIVE AGREEMENTS** (the "Agreement") is made and entered into as of the 30<sup>th</sup> day of April, 2004 (the "Effective Date"), by and between **BROOK HIGHLAND HIGHWAY, L.L.C.**, a Delaware limited liability company ("Assignor"), and **BROOK HIGHLAND COMMON PROPERTY ASSOCIATION, INC.**, an Alabama not-for-profit corporation ("Assignee").

**RECITALS:**

A. AmSouth Bank, N.A., as Ancillary Trustee for NCNB National Bank of North Carolina, as Trustee for the Public Employees Retirement System of Ohio, as Declarant (the "AmSouth/NCNB"), recorded that certain Brook Highland Common Property Declaration of Covenants, Conditions and Restrictions in the office of the Judge of Probate of Shelby County, Alabama in Book 307 at Page 950 (as amended by that certain First Supplemental Declaration of Brook Highland Common Property Declaration of Covenants, Conditions and Restrictions recorded in the office of the Judge of Probate of Shelby County, Alabama as Instrument Number 1998-40199, the "Declaration"), which Declaration encumbers certain real properties located in Shelby County, Alabama and more particularly described in the Declaration (collectively, the "Properties").

B. AmSouth/NCNB was a party to that certain Declaration of Protective Covenants recorded in the office of the Judge of Probate of Shelby County, Alabama in Book 194 at Page

54 (the "Watershed Covenants"), which Watershed Covenants encumber the Properties and certain other real property more particularly described therein.

C. AmSouth/NCNB was succeeded in interest by AmSouth Bank, N.A., as Ancillary Trustee for First Union National Bank, as Trustee for the Public Employees Retirement System of Ohio ("AmSouth/FUNB").

D. Assignor, AmSouth/NCNB and AmSouth/FUNB, each as Grantor, have conveyed certain of the Properties to third party purchasers, and each of the deeds of conveyance imposed certain restrictive agreements on such Properties pursuant to an Exhibit C attached to the deed entitled "Restrictive Agreement (Imposition of Protective Real Covenants on a Single Property)" (collectively, the "Restrictive Agreements"). The Restrictive Agreements include, without limitation, the Restrictive Agreements bearing the following recording information in the office of the Judge of Probate of Shelby County, Alabama: Book 1998 at Page 40200, Book 2000 at Page 13109, Book 2000 at Page 16172, Book 2002 at Page 82500, Book 1999 at Page 51735, Book 1997 at Page 41554, Book 1998 at Page 03085, Book 1998 at Page 08508, Book 1999 at Page 45933, Book 1996 at Page 26738, Book 1998 at Page 44664 and Book 1998 at Page 15836.

E. AmSouth/FUNB conveyed to Assignor certain of the Properties described in that certain Corporation Warranty Deed recorded in the office of the Judge of Probate of Shelby County, Alabama as Instrument Number 1998-24132, and in connection with such conveyance, AmSouth/FUNB assigned all of its rights, duties and obligations as Declarant under the Declaration to Assignor and assigned all of its rights, duties and obligations as AmSouth/NCNB under the Watershed Covenants to Assignor and assigned all of its rights, duties and obligations as Grantor under the Restrictive Agreements to Assignor.

F. Assignor has agreed to assign all of its rights, duties and obligations as Declarant under the Declaration to Assignee and Assignee has agreed to assume all of Assignor's rights, duties and obligations as Declarant under the Declaration. Assignee is the Association, as defined in the Declaration.

G. Assignor has agreed to assign all of its rights, duties and obligations as AmSouth/NCNB under the Watershed Covenants to Assignee and Assignee has agreed to assume all of Assignor's rights, duties and obligations as AmSouth/NCNB under the Watershed Covenants. Assignee is the AmSouth/NCNB Association, as defined in the Watershed Covenants.

H. Assignor has agreed to assign all of its rights, duties and obligations as Grantor under the Restrictive Agreements to Assignee and Assignee has agreed to assume all of Assignor's rights, duties and obligations as Grantor under the Restrictive Agreements.



## **AGREEMENT:**

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and of other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Assignor and Assignee hereby covenant and agree with each other as follows:

Section 1. Recitals. The Recitals set forth at the beginning of this Agreement are incorporated herein by this reference. The use of any capitalized term not otherwise defined herein shall have the meaning ascribed thereto in the Declaration, the Watershed Covenants or the Restrictive Agreements, as applicable.

Section 2. Assignment and Assumption of Rights, Duties and Obligations as Declarant under the Declaration. Assignor hereby transfers and assigns to Assignee all of Assignor's rights, duties and obligations as Declarant under the Declaration. Assignee hereby accepts such transfer and assignment and assumes and agrees to perform all of Assignor's duties and obligations under the Declaration as Declarant arising from and after the Effective Date. Assignee shall have no liability or obligation with respect to any matter relating to any act, event, omission or circumstance occurring on or prior to the Effective Date.

Section 3. Assignment and Assumption of Rights, Duties and Obligations as AmSouth/NCNB under the Watershed Covenants. Assignor hereby transfers and assigns to Assignee all of Assignor's rights, duties and obligations as AmSouth/NCNB under the Watershed Covenants. Assignee hereby accepts such transfer and assignment and assumes and agrees to perform all of Assignor's duties and obligations under the Watershed Covenants as AmSouth/NCNB arising from and after the Effective Date. Assignee shall have no liability or obligation with respect to any matter relating to any act, event, omission or circumstance occurring on or prior to the Effective Date.

Section 4. Assignment and Assumption of Rights, Duties and Obligations as Grantor under the Restrictive Agreements. Assignor hereby transfers and assigns to Assignee all of Assignor's rights, duties and obligations as Grantor under the Restrictive Agreements. Assignee hereby accepts such transfer and assignment and assumes and agrees to perform all of Assignor's duties and obligations under the Restrictive Agreements as Grantor arising from and after the Effective Date. Assignee shall have no liability or obligation with respect to any matter relating to any act, event, omission or circumstance occurring on or prior to the Effective Date.

Section 5. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall comprise but one and the same instrument.

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IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed all in pursuance of proper legal authority, as of the day and year first above written.

ASSIGNOR:

BROOK HIGHLAND HIGHWAY, L.L.C.,  
a Delaware limited liability company

By: Faison & Associates, LLC, a North Carolina  
limited liability company, its Manager

By: [Signature]  
Name: John B. Detwiler  
Title: Vice President

STATE OF NORTH CAROLINA    )  
  )  
COUNTY OF MECKLENBURG    )

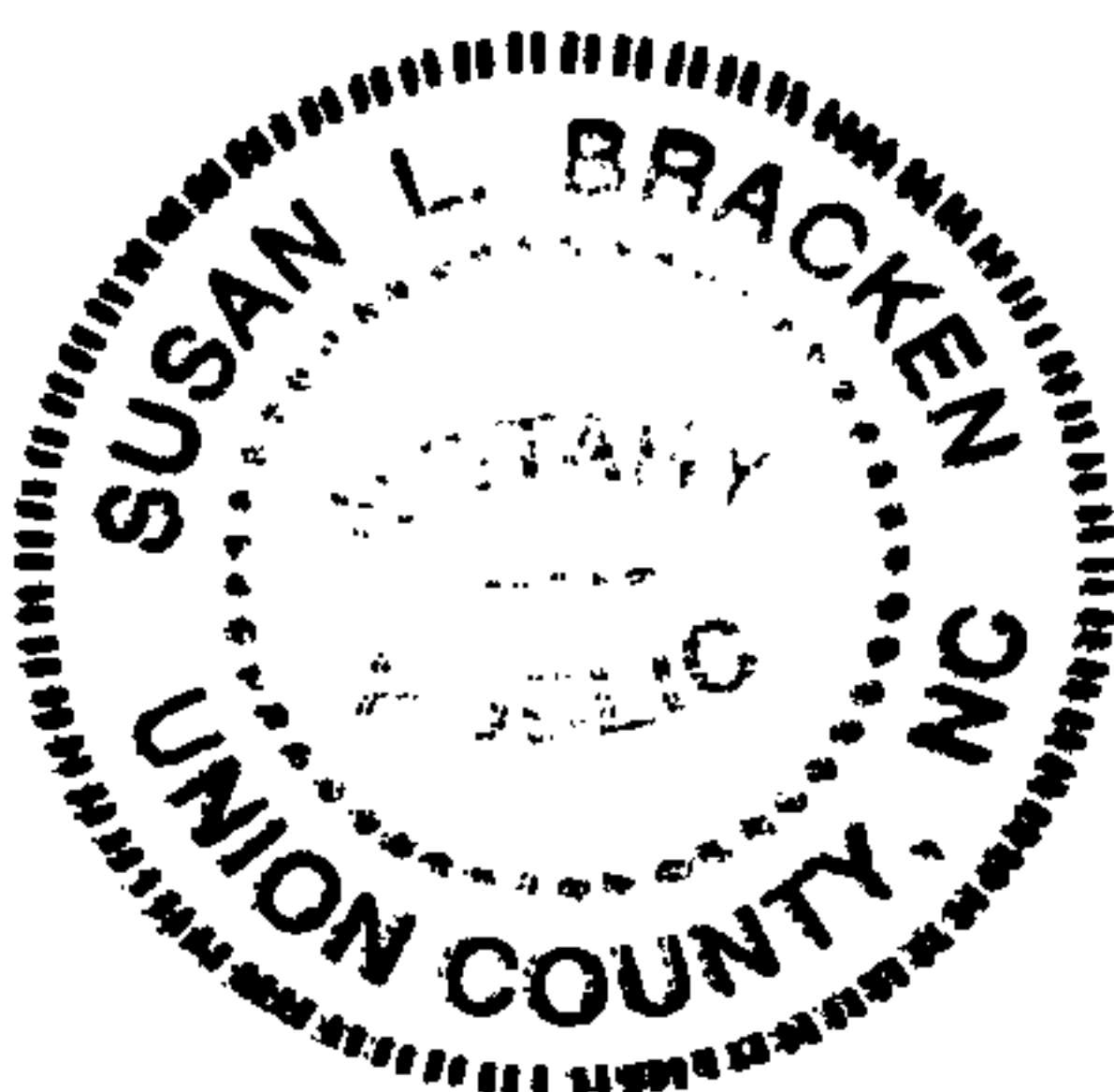
I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that John B. Detwiler, whose name as Vice President of Faison & Associates, LLC, a North Carolina limited liability company, Manager of BROOK HIGHLAND HIGHWAY, L.L.C., a Delaware limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, he, as such Vice President and with full authority, executed the same voluntarily for and as the act of Faison & Associates, LLC, as Manager of BROOK HIGHLAND HIGHWAY, L.L.C.

Given under my hand and official seal, this 28<sup>th</sup> day of April, 2004.

[Signature: Susan L. Bracken]  
Notary Public

My commission Expires Jan. 12, 2008

[NOTARIAL SEAL]





ASSIGNEE:

BROOK HIGHLAND COMMON PROPERTY  
ASSOCIATION, INC., an Alabama not-for-profit  
corporation

By: [Signature]

Name: John B. Detwiler

Title: Vice President

STATE OF NORTH CAROLINA   )  
  )  
COUNTY OF MECKLENBURG   )

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that John B. Detwiler, whose name as Vice President of BROOK HIGHLAND COMMON PROPERTY ASSOCIATION, INC., an Alabama not-for-profit corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, he, as such Vice President and with full authority, executed the same voluntarily for and as the act of BROOK HIGHLAND HIGHWAY COMMON PROPERTY ASSOCIATION, INC.

Given under my hand and official seal, this 28<sup>th</sup> day of April, 2004.

[Signature: Susan L. Bracken]  
Notary Public

My commission Expires Jan. 12, 2008

[NOTARIAL SEAL]

