

STATE OF ALABAMA )

1121

SHELBY COUNTY )

DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS

THIS DECLARATION made this 18th day of October, 1983 by VALLEYDALE VILLAGE PROPERTIES, an Alabama general partnership (hereinafter called the "Declarant").

W I T N E S S E T H:

WHEREAS:

- (a) Declarant is the owner of certain real property which is more particularly described in EXHIBIT "A" attached hereto and by this reference made a part hereof (hereinafter called the "Entire Premises");
- (b) Declarant has improved or caused to be improved that portion of the Entire Premises described in EXHIBIT "B" attached hereto and by this reference made a part hereof (hereinafter called the "Development Property") under a general plan or scheme;
- (c) Declarant has entered into Leases with Piggly Wiggly Alabama Distributing Co., Inc. (hereinafter called "Piggly Wiggly") and Big B, Inc. (hereinafter called "Big B"), wherein there is respectively demised to Piggly Wiggly and Big B, as Tenants, certain premises located in the Entire Premises for an initial term of twenty (20) years, subject to four (4) successive option extensions of the initial lease term, each for a period of five (5) years. The establishment of the restrictions, rights, privileges and easements hereby created is a principal inducement to Piggly Wiggly and Big B to omit the Bank Property from the legal description of the Shopping Center attached to the Piggly Wiggly and Big B leases;
- (d) Declarant proposes to enter into a Lease Agreement (the "Lease") with the First National Bank of Columbiana, a national banking association (hereinafter called the "Bank"), with respect to that portion of the Entire Premises described in EXHIBIT "C" attached hereto and by this reference made a part hereof (hereinafter called the "Bank Property");

BOOK 53 PAGE 310

*Micky Martin*

- 53 PAGE 311  
BOOK
- (e) The Lease provides that the Bank shall have the option of purchasing the Bank Property for the price and upon the terms and provisions set forth in the Lease;
  - (f) The Lease is subject and subordinate to the terms and provisions of this Declaration;
  - (g) Declarant desires to hereby create and establish certain easements, restrictions and obligations pursuant to the general plan or scheme for the Entire Premises;
  - (h) Declarant desires to establish and create for the benefit of the Bank Property and the Development Property certain rights of use, ingress, egress and parking, in, over and upon the parking areas, driveways and exits and entrances; and
  - (i) Declarant desires to establish and create for the benefit of the Development Property certain height and use restrictions with respect to improvements to be erected on the Bank Property.

NOW, THEREFORE, Declarant as owner of the Entire Premises for itself, its legal representatives, successors and assigns, declares as follows:

1. EASEMENT FOR PARKING AND INGRESS AND EGRESS - BANK PROPERTY: For so long as the Development Property shall be utilized as a shopping center, Declarant does hereby establish and create for the benefit of the Development Property and does hereby give, grant and convey to each and every person, firm or corporation who may now or hereafter own or lease all or any portion of, or any interest in, the Development Property, their successors, assigns, lessees, customers, employees and invitees, a perpetual, nonexclusive easement, license, right and privilege of passage and use, both pedestrian and vehicular, as appropriate, for the purpose of ingress, egress and parking in, to and over any and all the parking areas, driveways, and exits and entrances of the Bank Property. The portions of the Bank Property subject to the foregoing easements shall be kept, at the expense of the owner(s) of the Bank Property, in a clean, neat and orderly condition so as to keep said area free of all paper, debris, snow, ice and other refuse.

1

2. EASEMENT FOR PARKING AND INGRESS AND EGRESS - DEVELOPMENT PROPERTY: Declarant does hereby establish and create for the benefit of the Bank Property and does hereby give, grant, and convey to each and every person, firm or corporation hereafter owning all or any portion of, or any interest in, the Bank Property for the benefit of such owners and their lessees, successors, assigns, customers, employees, and invitees, a perpetual, nonexclusive easement, license, right and privilege of passage and use, both pedestrian and vehicular, as appropriate, for the purpose of ingress, egress and parking in, to, upon and over any and all of the parking areas, driveways, exits and entrances of the Development Property for so long as the Development Property is utilized as a commercial shopping center.

3. PARKING AREAS: For so long as the easement described in Paragraph 1 is in effect, the owners of the Bank Property shall, at all times, provide and maintain sufficient parking areas to provide a minimum ratio of at least 5.5 automobile parking spaces for each 1,000 square feet of gross building area in the Bank Property.

4. STRUCTURES WITHIN BANK PROPERTY: So long as a lease with Piggly Wiggly or Big B is in effect, no aboveground buildings or structures of any kind shall be erected on the Bank Property exceeding twenty (20) feet or one (1) story in height, and no aboveground building shall cover more than twenty-five per cent (25%) of the area of the parcel comprising the Bank Property. So long as the easement described in Paragraph 1 is in effect, the remainder of land in the parcel comprising the Bank Property not used for building construction shall be reserved for the common facilities, which may be used only as vehicular parking areas, roadways, service areas, drives, entrance ways and exits and sidewalks and other pedestrian ways and as landscaped and planting areas, but permitting those necessary appurtenances for such use, including, without limitation, paving, light standards, curbing, directional signs, drainage facilities and underground facilities and pylon signs advertising the business or businesses conducted by the occupants of the commercial buildings on the parcel comprising the Bank Property.

5. BARRIERS: The owners of the Development Property and the Bank Property may erect curbs, landscaping or bumper stops on their respective premises in order to define the boundaries of same. However, neither the owners of the Development Property nor the owners of the Bank Property shall erect any barriers to prohibit or prevent the perpetual, nonexclusive easement rights for parking and access granted and established hereby.

BOOK 53 PAGE 312

6. USE OF BANK PROPERTY: For so long hereafter as a lease to either Piggly Wiggly or Big B is in effect, no use shall be made of all or any portion of the Bank Property which shall be in competition with the primary use or business engaged in by Piggly Wiggly or Big B, to-wit:

- (a) For the sale for off-premises consumption of any staple or fancy groceries, meats, fish, vegetables, fruits, bakery goods, dairy products, frozen foods or beer and wine without written permission of Piggly Wiggly, except the sale by a restaurant operation of prepared, ready-to-eat food items for consumption either on or off the premises;
- (b) For operation of a drug store or a drug department in which a registered pharmacist is in attendance or required by law to be in attendance for any period of time or the operation of any store primarily engaged in the sale of health and beauty aids and related items without the prior written consent of Big B.

7. BENEFICIARIES OF EASEMENTS: The easements, licenses, rights and privileges established, created and granted hereby shall be for the benefit of, and restricted solely to, the owners from time to time of portions of the Entire Premises, their customers, employees and invitees, and the lessees of such owners now or hereafter occupying any portions of the Entire Premises for the duration of such tenancy, and to the customers, employees and invitees of said lessees, but the same is not intended nor shall it be construed as creating any rights in, or for the benefit of, the general public.

8. RIGHT TO CLOSE: Declarant, for itself and the then owners in fee of all or any part of the Entire Premises, does, however, reserve the right to close temporarily all or any portion of the parking facilities and easements to such extent, in the opinion of Declarant or the then owners of all or any part of such parking facilities and easements, as may be legally necessary and sufficient to prevent a dedication thereof to the public or an accrual of any rights in any person other than as aforesaid or in the public generally. Any such temporary closing shall, however, be further subject to the reasonable consent of the owners of the Entire Premises or their lessees.

9. CONDEMNATION: No grantee or beneficiary of any easement hereunder shall be entitled to any portion of any award or any proceeds resulting from a taking or condemna-

BOOK 53 PAGE 313

tion, or a conveyance in lieu of such taking or condemnation, of any portion of the Entire Premises except to the extent that such grantee or beneficiary shall own in fee such property so taken, condemned or conveyed.

10. DEDICATION: Notwithstanding anything contained in any other provision hereof to the contrary, any easement or rights herein established and created shall terminate and be of no further force or effect upon the dedication to and acceptance by the appropriate governmental authority of such easements or the rights created hereby; provided, however, that any dedication and acceptance of a portion of such easements or rights shall not affect the validity and effect of easements and rights not so dedicated and accepted.

11. INDEMNITY - INSURANCE: Bank shall indemnify and save harmless Piggly Wiggly and Big B from any claim or loss by reason of an accident or damage to any person or property happening on or about all common areas, including parking area (of the Bank Property); and Bank further agrees to carry, at its expense, public liability insurance coverage on all common areas (including parking area) of the Bank Property, with a contractual liability endorsement on the policy in a company qualified to transact business in the State of Alabama, stipulating limits of liability of not less than \$200,000 for an accident affecting any one person; not less than \$500,000 for an accident affecting more than one person and \$50,000 property damage.

12. AMENDMENTS AND MODIFICATIONS: The provisions of this Declaration may be abrogated, modified, rescinded or amended in whole or in part only with the consent of all the then owners of the Entire Premises, each and every lessor (in a sale-lease back) or mortgagee or beneficiary under any mortgage or deed of trust covering all or any part of the Entire Premises, by declaration in writing, executed and acknowledged by all said parties duly recorded in the Office of the Judge of Probate in and for Shelby County, Alabama; but this declaration may not be otherwise abrogated, modified, rescinded or amended, in whole or in part.

13. BREACH AND REMEDIES: This Declaration shall create privity of contract (or estate) with and among all grantees of all or any part of the Entire Premises, the holder of any mortgage thereon and Piggly Wiggly and Big B, their heirs, executors, administrators, successors or assigns. In the event of a breach or attempted or threatened breach, by any owner of any part of the Entire Premises, of any of the terms, covenants and conditions hereof, and after twenty (20) days' advance notice thereof, any one or all other owners of the Development Property and the Bank Property,

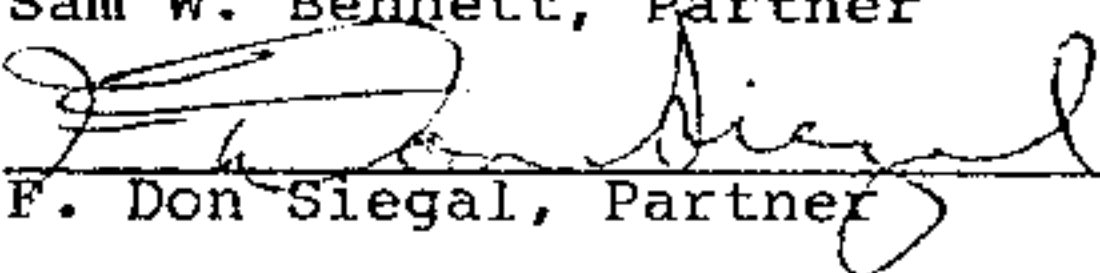
the holder of any mortgage thereon, Piggly Wiggly and Big B shall each be entitled forthwith to full and adequate remedy by injunction and/or all other available legal and equitable remedies from the consequences of such breach; and any deed, lease, assignment, conveyance or contract made in violation of this Declaration shall be void and may be set aside upon petition of one or more of the owners of a portion of the Entire Premises. Furthermore, any party or beneficiary hereunder shall have the right to cure any breach or default hereunder if same is not cured within sixty (60) days after such notice by the owner. All costs and expenses of any such suit or proceedings and all costs of curing such breach shall be assessed against the defaulting owner and shall constitute a lien against the real estate or the interest therein wrongfully deeded, leased, used, maintained, assigned, conveyed or contracted until paid, effective upon recording notice thereof in the Office of the Judge of Probate in and for Shelby County, Alabama; providing that any such lien shall be subordinate to any sale-lease back financing and any mortgage or deed of trust covering any portion of the Development Property and any purchaser at any foreclosure or trustee's sale, as well as any grantee of a deed in lieu of foreclosure or trustee's sale (under any such sale-lease back, mortgage or deed of trust) shall take title free from any such existing lien but otherwise subject to the provisions hereof. The remedies of any one or all such owners, mortgagees and Piggly Wiggly and Big B shall be cumulative as to each and as to all others permitted by law or in equity. The rights of Piggly Wiggly and Big B hereunder shall remain in effect only so long as they shall be lessees of a portion of the Development Property.

14. SUCCESSORS AND ASSIGNS: The terms, covenants, conditions and warranties herein shall run with the land and shall inure to the benefit of and shall be binding upon the Declarant and the respective executors, administrators, legal representatives, successors and assigns of the Declarant.

IN WITNESS WHEREOF, Declarant has duly executed this Declaration on the day and year first above written.

VALLEYDALE VILLAGE PROPERTIES, an  
Alabama general partnership

  
Sam W. Bennett, Partner

  
F. Don Siegal, Partner



M. J. Perlman  
M. J. Perlman, Partner

Ben Perlman  
Ben Perlman, Partner

Milton Domit  
Milton Domit, Partner

Eddie Leitman  
Eddie Leitman, Partner

Jerry D. Leitman  
Jerry D. Leitman, Partner

Robert M. Fierman  
Robert M. Fierman, Partner

Dr. Alan Siegal  
Dr. Alan Siegal, Partner

Jackson M. Payne  
Jackson M. Payne, Partner

MARIE INVESTMENT COMPANY, an  
Alabama General Partnership

By: [Signature]  
Its General Partner

STATE OF ALABAMA )  
JEFFERSON COUNTY )

I, the undersigned, a Notary Public, in and for said County in said State, hereby certify that Sam W. Bennett, whose name as a partner of Valleydale Village Properties, an Alabama general partnership, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that being informed of the contents of the instrument, he, in his capacity as such partner, executed the same voluntarily on the day the same bears date.

GIVEN under my hand this 19th day of October, 1983.

Morton E. Martin  
Notary Public

My Commission Expires: 8/3/87

STATE OF ALABAMA )

JEFFERSON COUNTY )

I, the undersigned, a Notary Public, in and for said County in said State, hereby certify that F. Don Siegal, whose name as a partner of Valleydale Village Properties, an Alabama general partnership, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that being informed of the contents of the instrument, he, in his capacity as such partner, executed the same voluntarily on the day the same bears date.

GIVEN under my hand this 18th day of October, 1983.

Alvin J. Martin  
Notary Public

My Commission Expires: 8/3/87

STATE OF ALABAMA )

JEFFERSON COUNTY )

I, the undersigned, a Notary Public, in and for said County in said State, hereby certify that M. J. Perlman, whose name as a partner of Valleydale Village Properties, an Alabama general partnership, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that being informed of the contents of the instrument, he, in his capacity as such partner, executed the same voluntarily on the day the same bears date.

GIVEN under my hand this 18th day of October, 1983.

Mark E. Martin  
Notary Public

My Commission Expires: 8/3/87

STATE OF ALABAMA )

JEFFERSON COUNTY )

I, the undersigned, a Notary Public, in and for said County in said State, hereby certify that Ben Perlman, whose name as a partner of Valleydale Village Properties, an Alabama general partnership, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that being informed of the contents of the instrument, he, in his capacity as such partner, executed the same voluntarily on the day the same bears date.



1  
GIVEN under my hand this 19th day of October,  
1983.

Morton E. Martin  
Notary Public

My Commission Expires: 8/3/87

STATE OF ALABAMA )

JEFFERSON COUNTY )

I, the undersigned, a Notary Public, in and for said County in said State, hereby certify that Milton Domit, whose name as a partner of Valleydale Village Properties, an Alabama general partnership, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that being informed of the contents of the instrument, he, in his capacity as such partner, executed the same voluntarily on the day the same bears date.

GIVEN under my hand this 19th day of October,  
1983.

Morton E. Martin  
Notary Public

My Commission Expires: 8/3/87

STATE OF ALABAMA )

JEFFERSON COUNTY )

I, the undersigned, a Notary Public, in and for said County in said State, hereby certify that Eddie Leitman, whose name as a partner of Valleydale Village Properties, an Alabama general partnership, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that being informed of the contents of the instrument, he, in his capacity as such partner, executed the same voluntarily on the day the same bears date.

GIVEN under my hand this 19th day of October,  
1983.

Morton E. Martin  
Notary Public

My Commission Expires: 8/3/87

STATE OF ALABAMA )

JEFFERSON COUNTY )

I, the undersigned, a Notary Public, in and for said County in said State, hereby certify that Jerry D. Leitman, whose name as a partner of Valleydale Village Properties, an Alabama general partnership, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that being informed of the contents of the instrument, he, in his capacity as such partner, executed the same voluntarily on the day the same bears date.

GIVEN under my hand this 19th day of October, 1983.

Morton S. Martin  
Notary Public

My Commission Expires: 8/5/87

STATE OF ALABAMA )

JEFFERSON COUNTY )

I, the undersigned, a Notary Public, in and for said County in said State, hereby certify that Robert M. Fierman, whose name as a partner of Valleydale Village Properties, an Alabama general partnership, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that being informed of the contents of the instrument, he, in his capacity as such partner, executed the same voluntarily on the day the same bears date.

GIVEN under my hand this 19th day of October, 1983.

Morton S. Martin  
Notary Public

My Commission Expires: 8/3/87

STATE OF ALABAMA )

JEFFERSON COUNTY )

I, the undersigned, a Notary Public, in and for said County in said State, hereby certify that Dr. Alan Siegal,

whose name as a partner of Valleydale Village Properties, an Alabama general partnership, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that being informed of the contents of the instrument, he, in his capacity as such partner, executed the same voluntarily on the day the same bears date.

GIVEN under my hand this 18th day of October, 1983.

Mark E. Martin  
Notary Public

My Commission Expires: 8/3/87

STATE OF ALABAMA )

JEFFERSON COUNTY )

I, the undersigned, a Notary Public, in and for said County in said State, hereby certify that Jackson M. Payne, whose name as a partner of Valleydale Village Properties, an Alabama general partnership, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that being informed of the contents of the instrument, he, in his capacity as such partner, executed the same voluntarily on the day the same bears date.

GIVEN under my hand this 18th day of October, 1983.

Mark E. Martin  
Notary Public

My Commission Expires: 8/3/87

STATE OF ALABAMA )

JEFFERSON COUNTY )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Mike Krawcheck, whose name as General Partner of Marie Investment Company, an Alabama General Partnership, as a partner of Valleydale Village Properties, an Alabama General Partnership, 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 said instrument, he, as such partner and with full authority, executed the same voluntarily for and as the act of said partnership, acting in its capacity as such partner aforesaid.

Given under my hand this the 19th day of October,  
1983.

Master E. Martin  
Notary Public

My Commission Expires: 8/3/87



BOOK 53 PAGE 321

1

EXHIBIT "A"

LEGAL DESCRIPTION

Part of the NW 1/4 of the NW 1/4 and the SW 1/4 of the NW 1/4 of Section 15, Township 19 South, Range 2 West, being more particularly described as follows:

Commence at the Northeast Corner of the SW 1/4 of the NW 1/4 of Section 15, Township 19 South, Range 2 West; Thence run West along the North line of said 1/4-1/4 Section line a distance of 338.0 feet to the point of beginning; Thence continue along said North line a distance of 25.0 feet; Thence turn Right 89°14'15" and run North a distance of 360.0 feet; Thence turn Left 89°14'15" and run West a distance of 608.74 feet; Thence turn Left 131°35' and run Southeasterly 440.25 feet; Thence turn Right 90°00' and run Southwesterly 80.0 feet; Thence turn Left 90°00' and run 437.11 feet to the Northwesterly right-of-way line of a public road; Said right-of-way line being in a curve to the left (having a radius of 2833.72 feet and an interior angle of 6°04'18"); Thence turn Left 82°11'40" to the tangent of said curve and run Northeasterly along said right-of-way line an arc distance of 300.29 feet; Thence from the tangent of said curve turn Left 90° and run Northwesterly a distance of 10.0 feet; Thence turn Right 90°00' and run Northeasterly along said right-of-way line a distance of 2.60 feet; Thence turn Left 86°56'50" and run Northwesterly a distance of 200.05 feet to the point of beginning. Containing 6.20 acres, more or less.

BOOK 53 PAGE 322

EXHIBIT "B"

LEGAL DESCRIPTION

Part of the NW 1/4 of the NW 1/4 and also a part of the SW 1/4 of the NW 1/4 of Section 15, Township 19 South, Range 2 West, and being more particularly described as follows:

Commence at the Northeast Corner of the SW 1/4 of the NW 1/4 of Section 15, Township 19 South, Range 2 West, thence run west along the North line of said 1/4 1/4 Section a distance of 338.0 feet to the point of beginning of the property described herein; thence continue along the last described course, and along said 1/4 1/4 line, a distance of 25.00 feet; thence turn right 89°14'15" and run north a distance of 360.00 feet; thence turn left 89°14'15" and run west a distance of 608.74 feet; thence turn left 131°35' and run southeasterly a distance of 440.25 feet; thence turn right 90°00' and run southwesterly a distance of 80.00 feet; thence turn left 90°00' and run southeasterly a distance of 295.81 feet; thence turn left 84°56'12" and run northeasterly a distance of 125.94 feet; thence turn right 84°39'30" and run southeasterly a distance of 144.84 feet to the Northwesternly right of way line of Valleydale Road; said right of way line being in a curve to the left (having a radius of 2833.72 feet and an interior angle of 3°30'14") thence turn left 84°29'02" to the tangent of said curve and run northeasterly along said right of way line an arc distance of 173.30 feet; thence from the tangent of said curve turn left 90°00' and run northwesterly along said right of way line a distance of 10.00 feet; thence turn right 90°00' and run northeasterly along said right of way line a distance of 2.60 feet; thence turn left 86°56'50" and run northwesterly a distance of 200.05 feet to the point of beginning. Said property containing 5.78 acres, more or less.



1

EXHIBIT "C"

LEGAL DESCRIPTION

Part of the SW 1/4 of the NW 1/4 of Section 15, Township 19 South, Range 2 West, and being more particularly described as follows:

Commence at the Northeast Corner of the SW 1/4 of the NW 1/4 of Section 15, Township 19 South, Range 2 West, thence run west along the North line of said 1/4 1/4 Section a distance of 26.25 feet to the northwesterly right of way line of Valleydale Road; thence turn 39°51' left and run southwesterly along said right of way line a distance of 252.60 feet; thence turn left 90°00' and run southeasterly along said right of way line a distance of 10.00 feet to a point on a curve to the right (having a radius of 2833.72 feet and an interior angle of 3°30'14") thence turn right 90°00' to the tangent of said curve and run southwesterly along said right of way line an arc distance of 173.30 feet to the point of beginning of the property described herein; thence continue southwesterly along said right of way line (being on a curve to the right having a radius of 2833.72 feet and an interior angle of 2°34'04") an arc distance of 126.99 feet; thence from the chord of said curve, turn right 83°28'42" and run northwesterly a distance of 141.30 feet; thence turn right 95°03'48" and run northeasterly a distance of 125.94 feet; thence turn right 84°39'30" and run southeasterly a distance of 144.84 feet to the point of beginning. Said property containing 0.42 acres, more or less.

BOOK 53 PAGE 324

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

1983 OCT 24 AM 9:29

*Thomas W. Lawrence, Jr.*  
JUDGE OF PROBATE

Rec 22.50  
Ind 1.00  

---

23.50