

STATE OF ALABAMA)

SHELBY COUNTY )

**NON-ENCUMBRANCE AGREEMENT**

THIS NON-ENCUMBRANCE AGREEMENT is made this the 26<sup>th</sup> day of May, 1992, by and between BIRMINGHAM REALTY COMPANY, an Alabama corporation with its principal place of business at 2118 First Avenue North, Birmingham, Alabama 35203 (the "Company"), and FIRST ALABAMA BANK, an Alabama banking corporation with its principal place of business at 417 North 20th Street, Birmingham, Alabama 35203 (the "Bank").

**W I T N E S S E T H:**

WHEREAS, the Company is indebted to the Bank, as evidenced by a certain promissory note (the "Note"); and

WHEREAS, the Company has requested that the Bank not take a mortgage on the real property described on Exhibit "A" attached hereto, as additional collateral; and

WHEREAS, the Bank is willing to accept this Non-Encumbrance Agreement in lieu of a mortgage as additional collateral,

NOW, THEREFORE, the undersigned Company, in consideration of the premises, hereby warrants, promises, and agrees as follows:

At any time that the real property described on Exhibit "A" attached hereto is sold, encumbered, mortgaged, transferred or assigned, the undersigned Company will reduce its indebtedness to First Alabama Bank by the sum of (a) \$700,000, or (b) by the amount necessary to put the Bank in the same position it would have been in had the said sum been amortized separately and principal payments had been credited to the said \$700,000, whichever is less.

Any notice or inquiry regarding this Non-Encumbrance Agreement shall be addressed as follows:

To the Company: Birmingham Realty Company  
Attn: President  
2118 First Avenue North  
Birmingham, Alabama 35203

To the Bank: First Alabama Bank  
Attention: Quality Control Dept.  
P.O. Box 10247  
Birmingham, Alabama 35202

10/13/1992-23303  
12:22 PM CERTIFIED

SHELBY COUNTY JUDGE OF PROBATE

003 NCD 11.50

*Lange, Simpson*

With Copy To:

Joseph W. Mathews, Jr.  
Lange, Simpson, Robinson &  
Somerville  
1700 First Alabama Bank Building  
Birmingham, Alabama 35203

IN WITNESS WHEREOF, the undersigned Birmingham Realty Company has caused this Non-Encumbrance Agreement to be duly executed in its name and behalf by its duly authorized officer, all as of the day and year first above written.

BIRMINGHAM REALTY COMPANY.

By:   
Its President

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, the undersigned Notary Public in and for said County in said State, hereby certify that Russell M. Cunningham, III, whose name as President of Birmingham Realty Company, an Alabama corporation, is signed to the foregoing Non-Encumbrance Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, 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 this the 26th day of May, 1992.

  
Notary Public  
My Commission  
Expires: \_\_\_\_\_ MY COMMISSION EXPIRES OCTOBER 12, 1994

This instrument prepared by:

Joseph W. Mathews, Jr.  
Lange, Simpson, Robinson &  
Somerville  
1700 First Alabama Bank Bldg.  
Birmingham, Alabama 35203

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PARCEL I:

Commence at the Southeast corner of the NE 1/4 of the SE 1/4 of Section 36, Township 18 South, Range 3 West, run thence in a Southerly direction along the East line of the SE 1/4 of the SE 1/4 of Section 36, Township 18 South, Range 3 West for a distance of 330 feet; thence turn an angle to the right of 105° 34' and run in a Northwesterly direction for a distance of 166.09 feet to the point of beginning; from the point of beginning thus obtained, thence turn an angle to the right of 74° 26', and run in a Northerly direction for a distance of 520 feet; thence turn an angle to the left of 90° 00' and run in a Westerly direction for a distance of 50 feet; thence turn an angle to the right of 90° 00' and run in a Northerly direction for a distance of 166.44 feet; thence turn an angle to the left of 136° 43' 30" and run in a Southwesterly direction along the Southeasterly right of way line of U. S. Highway 31 South for a distance of 731.76 feet; thence turn an angle to the left of 117° 42' 30" and run in a Southeasterly direction along the Northeasterly line of Lot 8 according to the Survey of Meeks First Addition to Shady Springs as recorded in Map Book 15, Page 31, in the Probate Office of Jefferson County, Alabama, for a distance of 221.38 feet; thence turn an angle to the right of 0° 52' and run in a Southeasterly direction for a distance of 345.16 feet; thence turn an angle to the left of 90° 52' 00" and run in a Northeasterly direction for a distance of 5.22 feet; thence turn an angle to the right of 90° and run in a Southeasterly direction for a distance of 6.08 feet to the point of beginning.

PARCEL II:

An easement for ingress and egress over and across the following tract of land:

A tract of land situated in the NE 1/4 of the SE 1/4, Section 36, Township 18 South, Range 3 West, Jefferson County, Alabama being more particularly described as follows: Commence at the Northeast corner of said 1/4-1/4 and run Southerly along the East line of said 1/4-1/4 a distance of 702.48 feet to a point on the Southeast right of way of U. S. Highway #31, thence right 43° 16' 30" and run Southwesterly along the Southeast right of way of U. S. Highway #31 a distance of 306.35 feet to the point of beginning; thence left 43° 16' 30" and run Southerly 166.44 feet; thence left 90° and run Easterly 14.0 feet; thence left 94° 38' and run Northwesterly 167.43 feet to a point on the Southeasterly right of way of U.S. Highway #31; thence left 132° 05' 30" and run Southwesterly along the Southeast right of way of U. S. Highway #31 a distance of 0.6 feet to the point of beginning. # 1992-23303

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