

4789

PROTECTIVE COVENANTS AND EASEMENT

WHEREAS, Victor Scott and his wife, Charlene H. Scott (Declarant), are the owners of a tract of land located in Montevallo, Shelby County, Alabama (Parcel A), on which there has been constructed the Vallo Plaza Shopping Center (Vallo) and which is more particularly described as follows:

A portion of the W 1/2 of the NE 1/4 and the SE 1/4 of the NW 1/4 of Section 3, Township 24 North, Range 12 East more particularly described as follows: Begin at the Southeast corner of the SW 1/4 of the NE 1/4 of Section 3, Township 24 North, Range 12 East and run Northerly along the East side of the said quarter-quarter for 708.9 feet to a point on the North side of the 60 foot wide right-of-way of State Highway #25, then turn an angle of 82 deg. 58 min. 53 sec. to the left and run Northwesterly and parallel to the said right-of-way for 974.37 feet, then turn an angle of 90 deg. 06 min. 57 sec. to the right and run Northerly for 20.00 feet to the point of beginning. (said point also being on the North side of the 100 foot wide right-of-way of State Highway #25). Then turn an angle of 90 deg. 00 min. to the left and run Westerly along the said 100 foot wide right-of-way for 205.54 feet, then turn an angle of 7 deg. 31 min. 11 sec. to the right and run 100.87 feet to a point on the North right-of-way of State Highway #155, then turn an angle of 7 deg. 32 min. 11 sec. to the right and run Westerly along the 80 foot wide right-of-way of said Highway #155 for 82.84 feet, then turn an angle of 74 deg. 56 min. 38 sec. to the right and run Northerly for 266.44 feet to a point on the South side of the 100 foot wide right-of-way of Southern Railroad, then turn an angle of 61 deg. 23 min. 15 sec. to the right and run Northeasterly along the said railroad right-of-way for 91.13 feet, then turn an angle of 1 deg. 04 min. 36 sec. to the left and run Northeasterly along the said railroad right-of-way for 351.71 feet, then turn an angle of 119 deg. 41 min. 21 sec. to the right and run Southerly for 519.00 feet back to the point of beginning. Situated in Shelby County, Alabama.

Whereas, Declarant is the owner of a tract of land approximately one acre in area (Parcel B), immediately adjacent and contiguous to Parcel A, and on which Declarant intends to construct and/or permit to be constructed one or more commercial and/or institutional buildings (Building Area) and, in conjunction therewith, to provide certain facilities (Common Facilities) exclusive of the Building Areas including, but not limited to, vehicular parking areas; and which is more particularly described as follows:



19771129000127470 1/6 \$.00  
Shelby Cnty Judge of Probate, AL  
11/29/1977 12:00:00 AM FILED/CERT





19771129000127470 2/6 \$.00  
Shelby Cnty Judge of Probate, AL  
11/29/1977 12:00:00 AM FILED/CERT

A portion of the W 1/2 of the NE 1/4 of the SW 1/4 of the NW 1/4 of Section 3, T-24-N, R-12E more particularly described as follows:

Begin at the S.E. corner of the SW 1/4 of the NE 1/4 of Section 3, T-24-N, S-12-E and run northerly along the east side of the said quarter-quarter for 708.9 ft. to a point on the north 60 ft. right of way of State Highway Number 25, then turn an angle of 82 deg. 58 min. 53 sec. to the left and run northwesterly and parallel to the said R.O.W. for 974.37 ft., then turn an angle of 90 deg. 06 min. 57 sec. to the right and run northerly for 20.00 ft. to a point on the north 100 ft. R.O.W. of State Highway No. 25, then turn an angle of 90 deg. 00 min. to the left and run northwesterly along said R.O.W. for 205.54 ft., then turn an angle of 7 deg. 31 min. 11 sec. to the right and run northwesterly for 100.87 ft. to a point on the north 80 ft. R.O.W. of State Highway No. 155, then turn an angle of 7 deg. 32 min. 11 sec. to the right and run northwesterly along the north 80 ft. R.O.W. of said road for 82.84 ft. to the point of beginning. Then continue along the same direction running northwesterly for 124.27 ft. to a point on the north R.O.W. of said road, then turn an angle of 4 deg. 12 min. 06 sec. to the right and run northwesterly for 209.21 ft. to a point of intersection of the north 80 ft. R.O.W. of State Highway No. 155 and the south 100 ft. R.O.W. of Southern Railroad, then turn an angle of 133 deg. 57 min. 26 sec. to the right and run northeasterly for 221.24 ft. to a point on the south 100 ft. R.O.W. of Southern Railroad, then turn an angle of 1 deg. 49 min. 39 sec. to the left and run northeasterly for 136.69 ft. to a point on the south 100 ft. R.O.W. of Southern Railroad, then turn an angle of 118 deg. 36 min. 45 sec. to the right and run southerly for 266.44 ft. back to the point of beginning. Situated in Shelby County, Alabama.

The above described parcel contains .98 acres and is subject to the easements, rights of way, and restrictions of record.

Whereas, Declarant desires to declare, establish, grant and provide for the benefit of Declarant and any subsequent 'Owners' now or hereafter of all or any portion of said Parcel A, and the respective heirs, legal representatives, successors and assigns of all of them, and any successor in title to all or any portion of said Parcel A, and also for the benefit of Piggly Wiggly Alabama Distributing Company, Inc. (Piggly Wiggly), which together with the holder or holders of any first mortgage now or hereafter constituting a lien against all or any portion of said Parcel A, are hereinafter referred to as "Beneficiaries", certain restrictions, rights, obligations, easements and licenses to run with the title to said Parcel B to the end that a parking plan, acceptable to Piggly Wiggly, will be established covering Parcels A and B,; and



Whereas, Declarant has entered into a lease with Piggly Wiggly, under which there was demised to it a portion of Parcel A for an initial term of twenty (20) years, from the 1<sup>st</sup> day of September, 1977, and the establishment of the restrictions and rights, privileges and easements hereby created was one of the principal inducements to Piggly Wiggly to enter into said lease; and

Whereas, it is desirable and essential that provision be made relative to Parcel B for the loss of any parking spaces in and on Parcel A, as a result of eminent domain, up to but not in excess of fifteen per cent (15%) of the total parking spaces now available on Parcel A; and

Whereas, it is desirable and essential that Declarant maintain for Piggly Wiggly a ratio of five parking spaces per one thousand square feet of leasable area and, if a portion of the same be required from Parcel B, that said parking facility and spaces be set aside on that portion of Parcel B adjacent and contiguous to Parcel A.

NOW THEREFORE, in consideration of the premises and the mutual benefits to the Declarant and to the Beneficiaries hereunder, the Declarant for himself, his heirs, legal representative, successors, grantees and assigns, does hereby declare and provide as follows:

1. That Declarant does hereby establish and create for Declarant and Beneficiaries hereunder and does hereby give, grant and convey to Declarant and said Beneficiaries, and to their respective employees, servants, agents, customers and invitees, a non-exclusive easement, right license and privilege of passage and use, both pedestrian and automotive, over, across and upon any or all portions of the common facilities for the purpose of ingress and/or egress and/or parking, and all said Common Facilities from time to time existing upon the above described Parcel B are hereby expressly reserved and set apart for such purpose or purposes, respectively. Nothing herein is intended to nor shall be construed to create any rights whatsoever

19771129000127470 3/6 \$.00  
Shelby Cnty Judge of Probate, AL  
11/29/1977 12:00:00 AM FILED/CERT





19771129000127470 4/6 \$.00  
Shelby Cnty Judge of Probate, AL  
11/29/1977 12:00:00 AM FILED/CERT.

for the benefit of the general public in said Parcels A or B or the improvements constructed or to be constructed thereon.

2. That if any portion of Parcel A, which is used for parking area, is taken under the power of eminent domain, thus reducing the number of cars which can be parked to a ratio below five parking spaces for each one thousand square feet of leasable area, then and in such event, Declarant will make available to and set aside for the exclusive use of the tenants of Vallo such portion of Parcel B, immediately adjacent and contiguous to Parcel A, as is sufficient in number, together with the remaining parking spaces in Parcel A, so as to maintain a ratio of five parking spaces for each one thousand square feet of leasable area in Parcel A, provided however, that the maximum parking spaces which Declarant shall be so required to provide on the said Parcel B shall not exceed fifteen per cent (15%) of the total parking spaces now available on Parcel A. Notwithstanding anything to the contrary herein, the terms and conditions of the lease, as amended, executed by and between Declarant and Piggly Wiggly Alabama Distributing Company, shall remain fully enforceable and binding against Declarant and Piggly Wiggly Alabama Distributing Company.

3. That, during the life hereof, the terms, covenants, conditions and provisions of these Protective Covenants may be extended, abrogated, modified, rescinded, or amended in whole or in part, only with the consent of Declarant and the Beneficiaries hereunder; but subject to such consent, Declarant or his successor or successors in title, expressly reserve the right to extend, abrogate, modify, rescind or amend the covenants and restrictions herein by an instrument in writing duly executed by the appropriate parties in interest and duly recorded in the Probate Office of Shelby County, Alabama.

4. That these Protective Covenants shall become effective on the date hereof and shall be binding upon all parties and/or persons and/or corporate entities claiming under them and shall run for the life of the lease between Victor Scott and Charlene H. Scott (as Landlord) and Piggly Wiggly Alabama Distributing Company, Inc. (as Tenant) and any extension and/or renewal thereof, relative to leasable area which is now or may hereafter be occupied by Piggly Wiggly in Parcel A.

5. That the easements, rights, privileges, restrictions and benefits created or granted under these Protective Covenants and each provision hereof shall be enforceable by Declarant and each Beneficiary hereunder by injunction or by specific performance and shall be deemed covenants running with the title to said Parcel B so long as these Protective Covenants (as the same may be amended from time to time) shall be in effect as above provided.

BOOK 22 PAGE 684

BOOK



6. That throughout this Agreement the masculine gender shall be deemed to include the feminine and neuter genders, and vice versa, and the singular number shall include the plural number, and vice versa, where applicable.

IN WITNESS WHEREOF, Victor Scott and his wife, Charlene H. Scott (Declarant) have hereunto set their hands and seals and Piggly Wiggly Alabama Distributing Company, Inc. has caused this instrument to be executed in their corporate names and the corporate seal to be hereunto affixed, and Southern National Bank, a national banking association, the holder of the first mortgage on Parcel A, has caused this instrument to be executed in their corporate name and the corporate seal to be hereunto affixed and attested by its corporate officer thereunto duly authorized, this the 1<sup>st</sup> day of November, 1977.



19771129000127470 5/6 \$.00  
Shelby Cnty Judge of Probate, AL  
11/29/1977 12:00:00 AM FILED/CERT

DECLARANT:

Victor Scott  
Victor Scott

Charlene H. Scott  
Charlene H. Scott

BENEFICIARIES:

PIGGLY WIGGLY ALABAMA  
DISTRIBUTING COMPANY, INC.

By W. P. Reed  
Its Vice President

SOUTHERN NATIONAL BANK,  
a national banking association

By William R. Weatherly  
Its Senior Vice-President

Attest:

Ann M. Tingle  
Its Vice-President

State of Alabama:  
Jefferson County:

Before me, the undersigned authority in and for said state and county, personally appeared Victor Scott and wife, Charlene H. Scott, whose names as Declarant are signed to the foregoing instrument and who are known to me, acknowledged before me on this

day, that being informed of the contents of said instrument, they executed the same voluntarily on the day the same bears date.

Given under my hand and seal this the 1<sup>st</sup> day of November, 1977.

Kathleen Hallman  
Notary Public



19771129000127470 6/6 \$.00  
Shelby Cnty Judge of Probate, AL  
11/29/1977 12:00:00 AM FILED/CERT

State of Alabama:  
County of Jefferson :

I, the undersigned Notary Public in and for said county, in said state, hereby certify that W. D. Reed, whose name as Vice President of Piggly Wiggly Alabama Distributing Company, Inc. is signed to the foregoing instrument, and who is known to me, acknowledged before me this day that he examined the foregoing Protective Covenants and Easement and does hereby consent to the execution, delivery, and recordation thereof, the same being satisfactory to him, and that he, as such officer and with full authority, executed the same voluntarily on the date the same bears date for and as the act of said corporation.

Given under my hand and seal this the 1<sup>st</sup> day of November, 1977.

John P. McClary  
Notary Public

State of Alabama:  
County of Jefferson :

I, the undersigned, a Notary Public in and for said state and county, hereby certify that William R. Westherly, whose name as Senior Vice-President of Southern National Bank, a national banking association, is signed to the foregoing Protective Covenants and Easement, 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 association.

Given under my hand and seal this the 1<sup>st</sup> day of November, 1977.

Debra D. Fard  
Notary Public

RECEIVED SHELBY COUNTY JUDGE OF PROBATE

1977 NOV 29 PM 3:52

Thomas G. ...  
JUDGE OF PROBATE

Rec. 9.00  
Ind. 1.00  
10.00