

STATE OF ALABAMA)
COUNTIES OF SHELBY)
AND JEFFERSON)

DECLARATION OF PROTECTIVE COVENANTS AND AGREEMENTS

KNOW ALL MEN BY THESE PRESENTS, that

WHEREAS, 280 Associates, Ltd., an Alabama limited partnership, is currently the fee simple owner of certain real property situated in Shelby County, Alabama, which is more particularly described on Exhibit "A" attached hereto, and Kovach Eddleman-Properties, an Alabama general partnership, is the fee simple owner of certain real property in Jefferson County, Alabama, which is more particularly described on Exhibit "B" attached hereto (280 Associates, Ltd. and Kovach Eddleman Properties shall hereinafter collectively be referred to as the "Declarants" and the property described on Exhibit "A" and Exhibit "B" shall hereinafter collectively be referred to as the "Declarants' Property");

WHEREAS, the Declarants desire to convey a portion of the Declarants' Property described on Exhibit "C" hereto (the "Property") to one or more purchasers thereof with the Declarants retaining the remainder of the Declarants' Property for their own respective use and development;

NOW, THEREFORE, the Declarants do, upon recording hereof, declare and make the Property and any portion thereof subject to covenants, conditions, restrictions, uses, limitations and affirmative obligations set forth herein, all of which are declared to be in furtherance of a plan for the use and improvement of the Property in a desirable and uniform manner suitable in architectural design, and all of which shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest in the Property or any part thereof, and shall be for the benefit of Declarants as owners of the Declarants' Property, and shall inure to the benefit of and be binding upon each successor in interest thereof.

Shelby Co. Abstract

BOOK 037 PAGE 96

ARTICLE I.

LAND USE

1.01 Permitted Uses. Any improvements constructed on the Property shall be used only for the following purposes ("Permitted Uses"):

(a) Retail store or shop; tavern or drive-in restaurant; bakery; drug store; automobile or farm implement display and sales room; and hardware or building material sales, together with service facilities, related to and used in conjunction with any of the foregoing uses.

(b) A shopping center or facility composed of any one or more of the permitted uses as set forth herein.

(c) Service station for the sale at retail of automobile fuels, oils, and accessories and/or the repair and servicing of automotive and farm products.

(d) A public, semi-public or private office, office warehouse, sales office; medical or dental office, clinic or laboratory or other professional or business office.

(e) Utility installations and utility service buildings.

(f) Bank or lending institutions.

(g) Hotels, motels or motor courts.

(h) Any of the following service or repair establishments: dying and cleaning establishment or laundry; painting and decorators; radio or television repair shop; dressmaking, millinery or tailoring establishment; upholstering shop (not involving furniture manufacturing); shoe repairing; repairing of household appliances; and any service or repair establishment of a similar character.

(i) Barber shop, beauty shop or similar personal service shop.

(j) Catering shop.

(k) Restaurant or coffee shop.

(l) Movie theatre or game room.

(m) Library or museum.

(n) Apartments, townhouses or condominiums for residential or office purposes.

(o) Any other commercial, office, retail, service, or repair establishment of similar character to any of the foregoing.

(p) Accessory and related structures and improvements with respect to any of the foregoing, including without limitation signs, drives, parking areas, storage areas, utilities, sewers, etc.

(q) Accessory and related uses to any of the foregoing.

(r) Any other use approved by the Architectural Control Committee in writing.

BOOK 037 PAGE 98
1.02 Garbage and Refuse. No lumber, metals, or bulk materials shall be kept, stored, or allowed to accumulate on any exterior portion of the Property, except building materials during the course of construction of any approved structure or improvement. No refuse or trash shall be kept, stored or allowed to accumulate on the exterior of the Property except between scheduled pick-ups and in accordance with the provisions hereof. If trash or other refuse is to be disposed of by being picked up and carried away on a regular and recurring basis, such trash or refuse may be placed in sanitary containers.

1.03 Outside Burning. Except during construction on the Property, burning of trash, refuse or other materials within the Property shall be prohibited.

1.04 Oil and Mining. No portion of the Property shall be used for the purpose of boring, mining, quarrying, exploring for or removing oil or other hydrocarbons, minerals, gravel or earth unless the right to extract minerals was granted or reserved prior to filing this Declaration.

1.05 Nuisance. No obnoxious, offensive or illegal activity shall be carried on upon any portion of the Property nor shall anything be done on any portion of the Property which may become an annoyance or nuisance to the Property.

ARTICLE II.

ARCHITECTURAL CONTROL

2.01 Approval of Use and Design. No structure, building, or fence shall be commenced, erected, placed, moved on to or permitted to remain on any portion of the Property, unless plans and specifications thereof shall have first been submitted to and approved by the Architectural Control Committee (herein defined). Such plans and specifications shall be in such form and shall contain such information, as may be reasonably required by the Architectural Control Committee and shall include, but not necessarily be limited to, (a) a site plan showing the location, height, and exterior design (including a summary of all proposed materials together with samples of exterior materials and paint colors) of all buildings and improvements proposed to be constructed on the Property, (b) any changes in grading plan approved by the Shelby County Planning Commission with respect to the Property; (c) any changes in drainage plan approved by the Shelby County Planning Commission with respect to the Property; and (d) a statement of the proposed use of the improvements to be constructed on the Property. The plans shall be submitted to the Architectural Control Committee, at least five days prior to the date construction is scheduled to commence and the Architectural Control Committee shall be entitled to retain said plans for their records. Modifications to such plans may be submitted from time to time to the Architectural Control Committee, for its approval, with respect to any significant changes in the Plans, after same have initially been approved.

2.02 Architectural Control Committee. The Architectural Control Committee (the "Committee") is composed of Billy D. Eddleman and Frank Kovach, Jr. A majority of the Committee may designate a representative to act for it. In the event of death or resignation of any member of the Committee, the remaining members shall have full authority to designate a successor. Neither the members of the Committee, nor its designated representative, shall be entitled to any compensation for services

performed pursuant to this covenant. At any time, the Declarants, jointly, shall have the power, through a duly recorded written instrument, to change the membership of the Committee, to withdraw from the Committee or restore to it any of its powers and duties.

2.03 Evidence of Approval of Plans. The approval of the Committee shall be evidenced by a written permit executed by the Committee or their respective agents, and countersigned by the applicant therefor. The written permit shall be executed in duplicate with one copy to be retained by the Committee and one copy to be retained by the applicant.

2.04 Basis for Disapproval of Plans.

(a) The scope of review by the Committee shall be limited to the proposed use and exterior appearance only. THE DECLARANTS DO NOT ASSUME OR ACCEPT BY THE FILING HEREOF ANY RESPONSIBILITY OR AUTHORITY TO REVIEW FOR STRUCTURAL SOUNDNESS, COMPLIANCE WITH BUILDING OR ZONING CODES OR STANDARDS, OR ANY OTHER FACTORS.

(b) The Committee shall have the right to disapprove any plans and specifications submitted for approval for any of the following reasons, and for such reasons only:

(i) failure to include information in such plans and specifications as may have been reasonably requested by the Committee;

(ii) failure of such plans and specifications to comply with the architectural criteria set forth in Article III of this Declaration;

(iii) a proposed structure or improvement is designed or intended for a use other than a Permitted Use;

(iv) failure of the drainage plan to comply with the sedimentation and erosion control plan for the Property approved by the Water Works Board of the City of Birmingham.

(c) Approval of any plans and specifications submitted to the Committee shall terminate and be rendered void if construction is not begun within one year after the date of the certificate

evidencing such approval unless such one year period is extended by the Committee in which event the extended time period shall be applicable.

(d) In any case where the Committee shall disapprove any plans and specifications submitted hereunder, or shall approve the same only as modified or upon specified conditions, such disapproval or qualified approval shall be accompanied by a statement specifying the grounds upon which such action was based. In any such case the Committee shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal can be prepared and submitted for approval.

2.05 Retention of Copy of Plans. Upon approval by the Committee of any plans and specifications submitted hereunder, a copy of such plans and specifications, as approved, shall be deposited for permanent record with the Committee, and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same.

2.06 Failure to Obtain Approval. If any structure or improvement shall be erected upon the Property otherwise than substantially in accordance with plans and specifications approved by the Committee pursuant to the provisions hereof, such erection shall be deemed to have been undertaken in violation of this covenant, and without the approval required herein, and, upon written notice from the Committee, given to the owner within sixty (60) days after completion of such structure or improvement, any such structure or improvement so altered, erected, or placed upon the Property in violation hereof shall be removed or realtered so as to extinguish such violation.

If fifteen (15) days after the notice of such a violation the owner of the property upon which such violation exists shall not have taken reasonable steps toward the removal or termination of the same, the Committee shall have the right, through its agents and employees, to enter upon such Property and to take such steps as may be reasonably necessary to extinguish such violation and the cost thereof shall be a binding, personal obligation of such

owner as well as a lien (enforceable in the same manner as a mortgage) upon the property in question. The lien provided in this covenant shall not be valid as against a bona fide purchaser (or bona fide mortgagee) of the property in question unless a suit to enforce said lien shall have been filed in a court of record in Jefferson County and/or Shelby County, as the case may be, prior to the recordation among the land records of Jefferson County and/or Shelby County of the deed (or mortgage) conveying the property in question to such purchaser (or subjecting the same to such mortgage).

BOOK 037 PAGE 102
2.07 Certificate of Compliance. Upon completion of the construction of any structure or improvement substantially in accordance with plans and specifications approved by the Committee, the Committee shall, upon written request of the owner thereof, issue a certificate of compliance in form suitable for recordation, identifying such structure or improvement and the property on which such structure or improvement is placed, and stating the plans and specifications, the location of such structure or improvement and the use or uses to be conducted thereon have been approved and that such structure or improvement complies with the requirements of the Committee. Preparation and recording of such certificate shall be at the expense of such owner. Any certificate of compliance issued in accordance with the provisions of this Section 2.07 shall be prima facie evidence of the facts therein stated, and as to any purchaser or encumbrance in good faith and for value, or as to any title insurer, such certificate shall be conclusive evidence that all structures or improvements on the Property, and the use or uses described therein comply with all the requirements of these covenants.

2.08 Inspection Rights. Any agent of the Committee may at any reasonable time or times enter upon and inspect the exterior of the Property and the exterior of any improvements thereon for the purpose of ascertaining whether the construction of structures and improvements thereon are in compliance with the provisions hereof; and neither the Committee nor any such agent shall be

deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

ARTICLE III.

ARCHITECTURAL CRITERIA

BOOK 037 PAGE 103
3.01 Criteria. The Committee shall consider the architectural criteria set forth in this Article III with regard to plans and specifications submitted for approval pursuant to Article II of this Declaration. The Committee shall approve plans and specifications for structures, alterations, and additions which comply with the criteria set forth in this Article III and may in, its discretion, approve any such plans and specifications which do not comply with such criteria in all respects. The failure to insist on strict compliance with the architectural criteria set forth herein with respect to any plans and specifications submitted to the Committee shall not be deemed to be a waiver of the right of the Committee to insist on strict compliance with the architectural criteria set forth in this Article III with respect to any other plans and specifications submitted to the Committee prior or subsequent thereto.

3.02 Building Location and Size.

(a) The size of any structure, alteration or addition, and the location thereof in relation to the front and side boundaries of any lot within the Property, shall be determined in accordance with the requirements of the local governmental authority having jurisdiction over the Property, or in the absence of any such requirements, in accordance with the area and dimensional regulations for the B-2 General Business District as set forth in the Zoning Ordinance for Shelby County, Alabama as in effect as of the date of this Declaration.

(b) Notwithstanding the provisions of subparagraph (a) above other than signs, drives, paved areas, utilities, sewers and similar type improvements, no visible structure, alteration or addition on any lot within the Property which abuts the access road parallel to U.S. Highway 280 shall be constructed or maintained

within twenty-five (25) feet of the northeast boundary of said access road.

3.03 Signage. No sign shall be erected or maintained at any location within the Property which is not in compliance with the following:

(a) The requirements for signs, billboards and other advertising structures in the B-2 General Business District as set forth in the Zoning Ordinance for Shelby County, Alabama as presently in effect;

(b) The sign guidelines of Horizon 280 Association, a copy of which is attached as Exhibit D hereto, subject to such changes to which Horizon 280 Association may agree at the request of the person erecting such sign.

3.04 Parking. Off street parking and loading spaces shall be provided in accordance with the requirements of the local governmental authority having jurisdiction over the Property, or in the absence of any such requirements, in accordance with the requirements for the B-2 General Business District (or similar district if there is then no B-2 General Business District) as set forth in the Zoning Ordinance for Shelby County, Alabama then in effect.

3.05 Exterior Design. The exterior design of the structures shall to the extent feasible be compatible with the existing structures and uses within the Property and shall be subject to approval by the Committee, which approval shall not unreasonably be withheld. It is understood and agreed that the exterior design of the standard building plans for any nationally recognized retail store, restaurant, drive-in restaurant, hotel, or motel, shall be acceptable to the Committee, as well as any other exterior design of comparable or superior aesthetic quality.

ARTICLE IV.

MISCELLANEOUS

4.01 Term. The restrictions contained in this Declaration shall run with and bind the Property, shall inure to the benefit of and be enforceable by Declarants, their respective legal representatives, heirs, successors and assigns until the first to occur

of either of the following: (a) December 31, 1993; or (b) neither of the Declarants shall own any portion of the Property or any portion of the Declarants' Property; or (c) the Declarants shall, in their discretion, terminate this Declaration by filing a written statement to that effect with the Probate Offices of Jefferson County and Shelby County, Alabama, signed by both of the Declarants.

4.02 No Reverter. No restriction herein is intended to be, or shall be construed as, a condition subsequent or as creating a possibility of reverter.

4.03 Enforcement.

(a) In the event of a violation or breach of any of these restrictions or any amendments thereto by any owner of the Property, or portion thereof, or employee, agent, or lessee of such owner, the Declarants shall have the right to proceed at law or in equity to compel compliance with the terms and conditions hereof, to prevent the violation or breach of said restrictions, to sue for and recover damages or other dues, or take all such courses of action at the same time, or such other legal remedy they may deem appropriate. No delay or failure on the part of the Declarants to initiate an available remedy set forth herein shall be held to be a waiver of the Declarants or an estoppel of the Declarants to assert any right available to them upon the recurrence or continuation of said violation or the occurrence of a different violation.

(b) Damages shall not be deemed adequate compensation for any breach or violation of any provision hereof, and the Declarants shall be entitled specifically to relief by way of injunction as well as any other available relief either at law or in equity.

(c) The Declarants, if successful in enforcing a restriction or enjoining the violation of a restriction against an owner of the Property, or any portion thereof, may be awarded a reasonable attorney's fee against such owner.

4.04 Severability. Every one of the provisions and restrictions is hereby declared to be independent of, and severable from

the rest of the provisions and restrictions and of and from every other one of the provisions and restrictions and of and from every combination of the provisions and restrictions. Invalidation by any court of any provision or restriction in this Declaration shall in no way affect any of the other provisions or restrictions which shall remain in full force and effect.

4.05 Captions. The captions preceding the various paragraphs and subparagraphs of this Declaration are for the convenience of reference only, and none of them shall be used as an aid to the construction of any provision of this Declaration. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

4.06 Effect of Violation on Mortgage Lien. No violation of any provision of this Declaration shall defeat or render invalid the lien of any mortgage made in good faith and for value upon any portion of the Property; provided, however, that any mortgagee in actual possession, or any purchaser at any mortgagees' or foreclosure sale shall be bound by and subject to this Declaration as fully as any other owner of any portion of the Property.

4.07 Approval Procedures.

(a) In any case where the consent or approval or the issuance of a certificate is requested of the Committee pursuant to this Declaration, such consent or approval or the issuance of such certificate shall not be unreasonably refused or withheld by the Committee; and the Committee shall respond to such request in writing no later than five (5) days after the date upon which such request shall have been served on the Committee, or else the Committee shall be deemed to have given its approval or consent, or to have issued such certificate, as the case may be. Any negative response to any such request shall include a description of the matters or items to which the Committee objects, and a statement of the reasons for such objections.

(b) Any request for the consent or approval of the Committee or for the issuance of a certificate by the Committee

or any other notice or submission to the Committee shall be in writing, and shall be deemed served upon and submitted to the Committee when hand delivered or three (3) days after such notice or submission shall have been deposited, postage prepaid, in the United States mail, certified, return receipt requested, to:

280 Associates, Ltd.
2700 U.S. Highway 280
Suite 90
Birmingham, Alabama 35223

or to such other person or address as the Committee may from time to time designate by notice as provided herein.

(c) Any response by the Committee to any such request for the consent or approval of the Committee or the issuance of a certificate by the Committee, or any other notice or submission given pursuant to this Declaration by the Committee, shall be in writing, and shall be deemed served when hand delivered or deposited, postage prepaid, in the United States mail, certified, return receipt requested, to:

Investment Southeastern, Ltd.
c/o William G. Vance
1400 Candler Building
Atlanta, Georgia 30043

or to such other person or address as the requestor or person to receive notice may from time to time designate by notice to the Committee provided herein.

(d) In the event the requestor disputes the timely refusal or withholding by the Committee of its approval or consent, or the issuance of any certificate, such dispute at the request of the party seeking such approval, consent or certificate, shall be submitted to and settled by arbitration in Birmingham, Alabama in accordance with the Commercial Arbitration Rules of the American Arbitration Association, with one arbitrator, who if available and willing to serve shall be _____.

4.08 Inapplicability. The provisions of Sections 2.01, 2.03, 2.04, 2.05, 2.06, 2.07, 2.08, 3.01, and 3.05 shall not be applicable to any portion of the Property owned by any nationally recognized retail store, restaurant, drive-in restaurant, hotel

or motel, or franchisee thereof, where such property is used for such purpose.

IN WITNESS WHEREOF, the undersigned as the owner of the Property has caused this Declaration to be executed as of the 16th day of April, 1985.

KOVACH EDDLEMAN PROPERTIES,
a general partnership whose
partners are:


Frank Kovach, Jr.


Billy D. Eddleman

280 ASSOCIATES, LTD., a limited
partnership

By: 

Frank Kovach, Jr. - General
Partner

By: 

Billy D. Eddleman - General
Partner

BOOK 037 PAGE 108

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Frank Kovach, Jr. and Billy D. Eddleman, whose names as general partners of Kovach Eddleman Properties, an Alabama general partnership, 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 the instrument, they as such general partners, and with full authority, executed the same voluntarily for and as the act of said general partnership.

Given under my hand and official seal, this the 16th day of April, 1985.

Carol H. Wolfe
Notary Public

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Frank Kovach, Jr. and Billy D. Eddleman, whose names as general partners of 280 Associates, Ltd., an Alabama limited partnership, 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 the instrument, they as such general partners, and with full authority, executed the same voluntarily for and as the act of said limited partnership.

Given under my hand and official seal, this the 16th day of April, 1985.

Carol H. Wolfe
Notary Public

BOOK 037 PAGE 109

EXHIBIT "A"
TO
DECLARATION OF PROTECTIVE COVENANTS AND AGREEMENTS

PARCEL 1

LEGAL DESCRIPTION:

BOOK 037 PAGE 110
A part of the NW1/4 of NW1/4 of Section 36, Township 18 South, Range 2 West, more particularly described as follows: Commence at the SE corner of the NW1/4 of NW1/4 of Section 36, Township 18 South, Range 2 West and run North along East line of said 1/4-1/4 Section 521.9 feet to point of beginning of parcel herein described; thence continue along last described course 271.57 feet; thence left 88 deg. 05' and run West 350.0 feet; thence right 88 deg. 05' and run North 550 feet to a point on the North line of said NW1/4 of NW1/4; thence left 88 deg. 05' and run West along said North line of said 1/4-1/4 Section 967.23 feet to the NW corner of said 1/4-1/4 Section; thence left 91 deg. 47' and run South along West line thereof 274.16 feet to a point on the Northeasterly right of way of U.S. Highway #280; thence left 52 deg. 25' 30" and run Southeasterly along said right of way 256.60 feet to a point; thence left 0 deg. 08' and continue Southeasterly along right of way 697.16 feet to a point, being the centerline of a 50-foot easement for ingress and egress that extends Northeasterly along herein described parcel; thence right 0 deg. 08' and continue Southeasterly along said right of way 450.0 feet to a point being the Westerly corner of a 1 acre parcel deeded to Marquis Hunt, Jr., and C. Beaty Hanna in October 1968; thence left 90 deg. and run Northeasterly along Northwesterly line of said 1 acre parcel 336.19 feet to point of beginning. Containing 17.56 acres, more or less, and subject to a 50-foot easement for ingress and egress to adjacent parcels.

Situated in Shelby County, Alabama.

PARCEL 2

LEGAL DESCRIPTION:

A part of the NW1/4 of NW1/4 of Section 36, Township 18 South, Range 2 West, more particularly described as follows: Begin at the NE corner of the NW1/4 of NW1/4 of Section 36, Township 18 South, Range 2 West, and run South along the East line thereof 550.0 feet; thence right 91 deg. 55' and run West 350.0 feet; thence right 88 deg. 05' and run North 300.0 feet; thence right 91 deg. 55' and run East 160.0 feet; thence left 91 deg. 55' and run North 250.0 feet to point on Northline of said NW1/4 of NW1/4; thence right 91 deg. 55' and run East 190 feet to point of beginning. Containing 3.50 acres, more or less.

Situated in Shelby County, Alabama.

PARCEL 3

LEGAL DESCRIPTION:

A part of the NW1/4 of NW1/4 of Section 36, Township 18 South, Range 2 West, described as follows: Commence at the NE corner of the NW1/4 of NW1/4 of Section 36, and run West along the North line thereof 190.0 feet to the point of beginning of the herein described tract; thence continue along last described course 160.0 feet; thence left 91 deg. 55' and run South 250.0 feet; thence left 88 deg. 05' and run East 160.0 feet; thence left 91 deg. 55' and run North 250.0 feet to point of beginning. Containing 0.92 acres, more or less.

Situated in Shelby County, Alabama.

EXHIBIT "B"
TO
DECLARATION OF PROTECTIVE COVENANTS AND AGREEMENTS

The SW1/4 of the SW1/4 of Section 25, Township 18 South, Range 2
West, situated in Jefferson County, Alabama.

BOOK 037 PAGE 111

EXHIBIT "C"
TO
DECLARATION OF PROTECTIVE COVENANTS AND AGREEMENTS

A tract or parcel of land situated in the NW1/4 of the NW1/4 of Section 36, Township 18 South, Range 2 West, being more particularly described as follows:

Begin at the Northwest corner of the NW1/4 of the NW1/4 of Section 36, Township 18 South, Range 2 West; thence East along the North line of said 1/4-1/4 section a distance of 907.31 feet to a point; thence 88 deg. 02' 30" to the right in a Southerly direction a distance of 200.18 feet to the P.C. (point of curve) of a curve to the right having a radius of 227.33 feet and a central angle of 37 deg. 41'; thence Southerly and Southwesterly along the arc of said curve a distance of 149.51 feet to the P.T. (point of tangent) of said curve; thence Southwesterly, tangent to said curve, a distance of 151.20 feet to the P.C. (point of curve) of a curve to the left having a radius of 1282.00 feet and a central angle of 4 deg. 34' 26"; thence Southwesterly along the arc of said curve a distance of 102.37 feet to the P.T. (point of tangent) of said curve; thence Southwesterly, tangent to said curve, a distance of 197.20 feet to a point on the Northeasterly right-of-way line of U.S. Highway No. 280; thence 94 deg. 34' 26" to the right in a Northwesterly direction along said right-of-way line a distance of 502.73 feet to a point; thence 0 deg. 32' 45" to the left in a Northwesterly direction along said right-of-way line a distance of 254.49 feet to a point on the West line of said 1/4-1/4 section; thence 53 deg. 01' 13" to the right in a Northerly direction along said 1/4-1/4 section line a distance of 227.41 feet to the point of beginning.

Situated in Shelby County, Alabama.

A tract or parcel of land situated in the SW1/4 of the SW1/4 of Section 25, Township 18, Range 2 West, being more particularly described as follows:

Begin at the Southwest corner of thw SW1/4 of the SW1/4 of Section 25, Township 18 South, Range 2 West; thence North along the West line of said 1/4-1/4 section a distance of 524.51 feet to a point; thence 128 deg. 28' 32" to the right in a Southeasterly direction a distance of 762.53 feet to a point; thence 21 deg. 38' 50" to the left in a Southeasterly direction a distance of 323.18 feet to a point on the South line of said 1/4-1/4 section; thence 165 deg. 55' 18" to the right in a Westerly direction along the South line of said 1/4-1/4 section a distance of 907.31 feet to the point of beginning.

Situated in Jefferson County, Alabama.

EXHIBIT "D"
TO
DECLARATION OF PROTECTIVE COVENANTS AND AGREEMENTS

SUGGESTIONS FOR SIGN CONTROLS
ALONG THE U.S. 280 CORRIDOR

BACKGROUND

WHAT IS A SIGN?

A sign could be defined as any form of advertising visible from a public street or highway directing attention to an individual activity, business, service, commodity, or product and conveyed by means of words, figures, numerals, lettering, emblems, devices, designs, trade marks or trade names or other graphic designs intended to convey information concerning the subject being advertised. It may be displayed by means of bills, panels, posters, paints, or other devices erected on an open framework, or attached or otherwise applied to walls, posts, poles, trees, buildings, or other supports.

WHAT IS THE FUNCTION OF A SIGN?

The primary function of signs along a roadway is to communicate messages to the motoring public. To communicate effectively, the sign should be clearly legible and occupy an environment where its message is not obstructed by vegetation, structures, or other competing signs. Its size should bear a relationship to the speed of traffic on the roadway and the distance a car will travel before the motorist can respond to a message. The size of the sign should not be so overwhelming, and its design should not be so garish, that the sensibilities of those it seeks to attract are offended.

PERCEPTION BY MOTORISTS

BOOK 037 PAGE 113
When a roadway or commercial area becomes too cluttered with signs competing for attention, the effect on the intended observer is negative. There is a finite limit to the amount of graphic information that the occupant of a moving car can handle. The average person reads a book or newspaper at a rate of about 300 words per minute or less. They typically read one syllable at a time. But, a driver's ability to perceive a sign message is reduced because of concentration primarily on the road and traffic conditions. Perception is as much concerned with remembering what has been as it is with the act of seeing itself. A motorist travelling along a roadway with excessive sign clutter may see many sign messages but remember few or none. What does this mean for the advertiser? Simply that there are severe limitations on the amount of information that the driver of a moving car can receive, process and remember. Therefore, reasonable sign controls can be of real benefit to businesses and other roadside establishments who wish to convey an effective message to the passing motorists.

AMENITY.

In competing for the attention of motorists, business proprietors often feel compelled to erect larger signs in increasing numbers to attract attention. When carried to extremes, the result is a maze of signs with too many messages

for the motorists to comprehend. Their excessive numbers, and often overwhelming size, defeat the attempt of businessmen to communicate effectively. The resulting visual pollution is offensive to a large segment of the public and diminishes the appeal of the commercial area.

Signs are a good indicator of what people think of their community. They reveal much about a community's pride, its economic vitality, and its sense of order. The importance of well designed signs that perform their function without offense to the surrounding environment has long been recognized by developers of major commercial and residential developments. For example, visitors to Hilton Head, Amelia Island, and other similar developments, are generally impressed with the tasteful use of signs which provide essential information while blending compatibly with overall development.

In expressing their resentment over excessive signage, many people focus their anger on billboards. But, more often, it is the on-premise signs of individual establishments that create the greatest visual pollution. Signs advertising small strip shopping centers are often larger, and generally more garish, than signs advertising large regional shopping centers. The excessive clutter of signs around some small roadside establishments is more offensive than even an appropriately located billboard.

SIZE OF SIGNS

As the size of signs is increased, they attract more attention and can be read from a greater distance. This is why the typical billboard may range in size from 300 square feet to almost 700 square feet. It is also the reason why some commercial establishments favor large signs. But, when one establishment erects an oversized sign, other competing establishments feel compelled to follow suit, often with even larger signs. When carried to extremes, signs become the overpowering element in the visual environment and the ability of the motorist to perceive their messages is sharply reduced.

Following are some basic principles to use in establishing reasonable sign dimensions:

Speed. The faster a car is moving, the farther it travels while a driver is reacting to a message. A driver who is concentrating on road and traffic conditions usually requires about 10 seconds to comprehend a sign message. At 30 miles per hour, a car will travel 440 feet during this ten second period and the symbols or lettering on a sign should be legible at this distance. At a speed of 60 miles per hour, the driver still requires 10 seconds to comprehend a sign message and it must be legible at a distance of 880 feet to permit response. For this reason, the size of signs should increase as roadway speeds increase.

Size of Signs. It is fairly well established that for every 50 feet of distance separating the viewer from a sign, one inch of letter height is required. For example, at a distance of 150 feet, the height of letters must be three inches if they are to be read by the viewer. The size of letters required for recognition at varying roadway speeds is as follows:

<u>Speed</u>	<u>Minimum Distance for Comprehension</u>	<u>Letter Size</u>
30 mph	440 feet	8.8 inches
45 mph	660 feet	13.2 inches
60 mph	880 feet	17.6 inches

There is a finite limit to the amount of graphic information that the occupants of a moving car can handle. Studies have shown that the average driver of a moving car can comprehend only six items (syllables, symbols, and graphic devices) at a time. This would be equivalent to about 18 letters. It is a rule of thumb in the sign industry that letters (symbols) should occupy 40 percent of the total area of roadside signs and that the remaining sign area should be background. If it is assumed that each letter occupies a space with a width equivalent to letter height, then the minimum sign sizes required for various speeds would be as follows:

<u>Number of Letters</u>	<u>Vehicle Speed</u>	<u>Area Occupied by Letters</u>	<u>Total Sign Area</u>
18	30 mph	9.6 sq. ft.	24.2 sq. ft.
18	45 mph	21.8 sq. ft.	54.5 sq. ft.
18	60 mph	38.7 sq. ft.	96.8 sq. ft.

There are other considerations in determining sign size. The abilities of drivers to read sign messages at a given distance varies considerably. Signs on buildings in commercial developments may be set back several hundred feet from a roadway thus requiring larger letters for comprehension. Some establishments desire to provide more information than can be contained in an 18 letter message. But, the preceding discussion points out that signs need not be too large nor too numerous to achieve their intended purpose.

LEGAL BASIS FOR SIGN CONTROL

Sign controls can be established by private agreements between owners and tenants; by covenants covering signs within a unified development; or by ordinances based on the exercise of the police power. It is the latter form of control, usually in the form of a zoning ordinance, that is used to control signs over a broad area. Police power is concerned with health, safety, morals and general welfare, but not explicitly with amenity or aesthetics. However, concepts of public safety and general welfare are sufficiently broad to offer a basis for sign controls. The public safety is endangered when the clutter of signs interferes with the motorists' ability to perceive traffic control signs and signals or their ability to have an adequate view of traffic, particularly at intersections. The general welfare is adversely affected when a business establishment loses trade because its neighbors' signs have screened it from view. If the visual blight caused by excessive signage diminishes the appeal of a commercial area or of adjoining residential areas, the general welfare

of the broader community is adversely affected. The courts have shown an increasing awareness of the importance of aesthetics to the general welfare. As early as 1954, the Supreme Court stated that:

"The concept of the public welfare is broad and inclusive The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well balanced as well as carefully patrolled."

BOOK 037 PAGE 116

D. Signs Permitted in Restricted Retail Trade and Service Business Districts.

1. Any sign permitted in Section IV-A above.
2. One detached sign including directly illuminated for each premises regardless of whether such premises contains one or more establishments. A detached ground sign shall not exceed an area of forty-eight (48) square feet and a pole sign shall not exceed an area of thirty-two (32) square feet except that if the frontage along a road on which the sign is to be erected exceeds fifty (50) feet, the sign area may be increased as follows:

- a. If it is a detached ground sign which is either nonilluminated or indirectly illuminated, maximum sign area may be increased one-half (0.5) square foot for each foot of frontage in excess of 50 feet up to a maximum sign size of ninety-six (96) square feet;
- b. If it is a directly illuminated ground sign, or an indirectly illuminated pole sign, maximum sign area may be increased three-tenths (0.3) square foot for each foot of frontage in excess of 50 feet up to a maximum sign size of sixty-four (64) square feet; and
- c. If it is a directly illuminated pole sign, maximum sign area may be increased two-tenths (0.2) square foot for each foot of frontage in excess of 50 feet up to a maximum sign size of forty-eight (48) square feet.

The maximum height of a detached pole sign shall not exceed twenty-five (25) feet.

The minimum required setback for a detached sign is ten (10) feet from a frontage road.

3. Flat signs, including directly illuminated, with a total aggregate sign area not more than one (1) square foot for each foot of length of the wall on which the signs are mounted and no one sign area exceeding forty-eight (48) square feet except that:

- a. for every foot of setback in excess of 50 feet from the frontage road, the maximum area of any individual sign may be increased two-tenths (0.2) square foot up to a maximum sign area of one-hundred fifty (150) square feet;
- b. for each story in height that a flat sign is raised above the second story of a building, its maximum area may be increased ten (10) square feet;

Illuminated signs of show windows, and within five feet thereof, shall be included in the computation of aggregate flat sign area and, in addition, shall be limited to twenty percent (20%) of the total glass area of the window in which they are placed.

Neon tubing outlining all or portions of store windows shall be included in computing flat sign area and measured by multiplying the length of the tubing by six (6) inches.

4. Projecting signs, including directly illuminated, one for each business on the premises, with the area of individual projecting signs limited to six (6) square feet.
5. Marquee signs, including directly illuminated, one for each business on the premises with sign area limited to sixteen (16) square feet.
6. Temporary, non-illuminated paper or painted signs in windows shall be limited to twenty percent (20%) of the total glass area of the window in which they are placed.
7. Directional signs, limited in area to six (6) square feet, giving directions to motorists regarding the location of parking areas, access drives, and places.
8. Awning signs, limited in number to two (2) for each side of a building with no individual sign exceeding an area of twelve (12) square feet.
9. Travelers directional signs, not more than one such sign for each two-hundred (200) feet of road frontage, with no individual sign exceeding an area of six (6) square feet or a height of six (6) feet.

STATE OF ALABAMA
I CERTIFY THIS
INSTRUMENT IS CORRECT

1985 AUG -8 AM 10:08

James A. [Signature]
JUDGE OF PROBATE

RECORDING FEES

Recording Fee	\$ 55.00
Index Fee	1.00
TOTAL	\$ 56.00