

1170

STATE OF ALABAMA)
SHELBY COUNTY)

RESTRICTIVE COVENANTS

This Declaration of Restrictive Covenants is made and entered into on this the 9th day of January, 1987 by Cahaba Valley Partnership, an Alabama General Partnership, hereinafter referred to as "Declarant".

WITNESSETH:

Declarant is the owner of of that certain parcel of real property located in Shelby County, Alabama, and more particularly described on the attached Exhibit A, which said property may sometimes hereinafter be referred to as the "Property". The Property has been subdivided into separate parcels, hereinafter sometimes referred to as "lot(s)". Declarant has determined to impose certain covenants and conditions upon the Property which shall be binding upon the property and the subsequent owners and occupants thereof. The purpose of this instrument is to more particularly set forth said covenants and conditions.

Now, therefore, Declarant hereby covenants and declares that the Property shall from henceforth be subject to the declarations, covenants, restrictions and conditions as follows:

BOOK 114 PAGE 865

CHARLES L. WATERS
RECORDING CLERK
1400 CHASE TOWER
Birmingham, AL 35203

1. NO METAL BUILDINGS. No metal buildings shall be permitted on any portion of the Property.

2. NO PUBLIC GARAGES. No public garage or other such automobile parking facility which is leased to the general public shall be permitted on any portion of the Property. This restriction, however, shall not prohibit private garages and such facilities the purpose of which is strictly to serve the occupants and visitors of facilities which are located on the Property.

3. NO VEHICLE REPAIR OR DISPLAY. There shall be no display, repair or servicing of farm implementations, automobiles, trailers, or vehicles of any kind or description permitted on any portion of the Property.

4. NO AUTOMOBILE SALES. No portion of the Property shall be used as an automobile sales lot for either new or used automobiles.

5. MAINTENANCE. It shall be the responsibility of each owner and occupant of any portion of the Property to maintain any such portion of the Property in a clean, good, neat and proper condition, which said obligation shall include all grounds, parking areas, driveways, buildings, yards, and improvements upon any such portion of the Property.

6. ARCHITECTURAL CONTROL COMMITTEE. Declarant hereby establishes an Architectural Control Committee (hereinafter the "Committee"). The Committee shall be initially composed of at least four (4) members. The initial members of the Committee shall be L. S. Evins, III, Earl M. Gibson, Edward T. Anderson and Avery A. Clenney. The membership of the Committee shall be controlled by the Declarant until the expiration of one year after the date on which Declarant has conveyed all

portions of the Property to parties other than the Declarant. Until said time, any member of the Committee may be removed and replaced at the discretion of the Declarant. Subsequent to said time, the membership of the Committee shall consist of no more than three (3) members who shall be elected on an annual basis by the vote of those persons, partnerships, corporations and other entities which own record title to a portion of the Property. There shall be only one vote for each lot. If a party owns more than one lot, then that party shall be entitled to one vote for each such lot. The voting shall occur at a meeting to be called by the outgoing Committee members. Written notice shall be given to each lot owner setting forth the time, place and date of the meeting, which shall be at least 15 days after the date of sending the notice. The lot owners may appear at the meeting in person or through a duly authorized representative or proxie. Representation at the meeting by the owners of seven (7) or more of the lots shall constitute a quorum. The three individuals receiving the highest number of votes cast shall comprise the membership of the Committee for the next twelve month period. No cumulative voting shall be allowed. Should the Committee fail to call a meeting for the election of new Committee members as required hereunder, then any lot owner may call such a meeting by giving the notice required hereunder.

7. REQUIRED APPROVALS. No improvements, including, but not limited to, buildings, fencing, driveways, parking facilities, signs, mailboxes, lighting facilities, sidewalks and landscaping, shall be constructed or altered, on any portion of the Property, until the architectural design and the plans and specifications therefore, including, but not limited to, the color, size, construction materials and design, have been submitted

to and approved in writing by the Committee. No trees or other vegetation shall be removed or altered in any manner, no dirt shall be moved or removed, nor shall the topography in any manner be altered with respect to any portion of the Property without the prior written approval of the Committee. Upon the completion of the construction of any such improvements, the exterior appearance of same may not be altered, whether by change in color, size or otherwise, until any such alteration has been approved by the Committee.

8. ESTABLISHMENT OF STANDARDS. The Committee shall have the right, but not the obligation, to establish and amend from time to time certain standards to govern the maintenance of the condition of any improvements which have been constructed upon any portion of the Property. The Committee may require that all such improvements, together with the yards and grounds appurtenant to same, be kept and maintained in a good, neat, clean, orderly and proper condition by the owners and occupants thereof.

9. APPLICATIONS FOR APPROVAL AND ACTION BY THE COMMITTEE. The Committee shall designate one of its members as the Committee's representative for the receipt of all applications for improvements and alterations proposed for any portion of the Property. The owner of any portion of the Property, prior to making any improvements or alterations thereto, shall submit a written proposal to said representative which shall include a description of the proposed improvements or alterations, the complete plans and specifications therefor, a description of the portion of the Property to be affected by the proposed improvements, and such other documents and information as the Committee might require. The

BOOK 114 PAGE 868

Committee shall be required to meet and consider and either approve or disapprove any such proposal within thirty days after its submission to said representative. If the Committee does not either approve or disapprove any such proposal, in writing, within said thirty day period, then the Committee shall be deemed to have given its approval to same and the proposed improvements or alterations may then be accomplished by the owner of the subject portion of the Property provided that same is commenced within thirty days after expiration of said prior thirty day period and provided that same is accomplished in strict compliance with the terms of the proposal and the plans and specifications therefor.

10. STANDARDS OF APPROVAL. The Committee shall have the right to approve or disapprove each proposed improvement or alteration to any portion of the Property on a case by case basis. The approval by the Committee of plans and specifications for improvements or alterations proposed for one portion of the subject Property shall not bind or require the Committee to approve a proposed improvement or alteration according to the same plans and specifications for any other portion of the Property, nor shall any such approval be deemed a standard against which any subsequent such proposal must be measured by the Committee. The Committee shall have the right to apply and impose such standards as it deems appropriate with respect to each portion of the Property for which an owner thereof proposes to make improvements or alterations.

11. RECONSTRUCTION AFTER DESTRUCTION. In the event of the destruction of any improvement on any portion of the Property, same shall be restored and maintained in accordance with the design, materials, color, and general plans and specifications previously approved pursuant to

the provisions of this instrument, subject to any changes to same which might be approved by the Committee as provided in this instrument. Such restoration shall commence and shall be completed by the owner as quickly as is reasonably practical under the circumstances.

12. DESIGNATION OF COMMON AREA. Lot 5A according to the record map of the Property is hereby designated as and shall be referred to in this instrument as the "Common Area". The owner of each lot shall be the owner of an undivided one-fourteenth (1/14th) interest in the Common Area as an appurtenance to the ownership of the lot. The ownership of and title to said undivided interest in the Common Area may not be conveyed, leased, transferred, encumbered or otherwise assigned or affected in any manner by the owner of any lot or by any other party except as an appurtenance to the conveyance, lease, transfer, encumbrance or other such assignment of the title to a lot. The title to the undivided interest of the Common Area appurtenant to each lot may not be partitioned, subdivided, or severed in any manner from the title to the lot. The conveyance or other transfer of any interest in any lot, whether voluntary or involuntary shall include, whether or not expressly stated in any such conveyance of transfer, the undivided one-fourteenth (1/14th) interest in the Common Area which is appurtenant to the lot.

13. USE OF COMMON AREA. The use of the Common Area shall be restricted to the owners and occupants of the lots and their guests and shall be subject to such rules and regulations as might from time to time be adopted by the Committee.

14. MAINTENANCE OF THE COMMON AREA AND OTHER AREAS. The Committee shall be and is hereby authorized to determine

what maintenance shall be required to the Common Area, to any other areas that are located within that portion of the Property which has been dedicated by the record map to public use, and to that portion of Lot 1 as designated in paragraph 26 of this instrument, and to enter into such agreements with other parties for the provision of such maintenance, service, replacement and other care and attention as the Committee, by majority vote of its members, shall deem appropriate. The expense associated with any such maintenance, service, replacement and other care and attention (the "Common Expense") shall be paid by the owners of the lots, the owners of each lot being responsible for the payment of one-fourteenth (1/14th) thereof. The Common Expense shall include, but shall not be limited to the following: Utility bills chargeable to the Common Area, including the cost of maintaining and operating lights located on the Common Area and on dedicated streets within the subdivision; expenses for maintaining any grass or landscaped areas; expenses for erecting or maintaining the sign upon Lot 1 as described in paragraph 26 hereof; and the expense of maintaining the lake located within the Common Area.

15. ASSESSMENTS. The Committee shall have the power to levy assessments against the owners of each lot for the Common Expense. The assessment per lot shall not exceed one-fourteenth (1/14th) of the Common Expense.

16. TERMS OF PAYMENT OF ASSESSMENTS. The Committee shall also have the power to fix the due date of any or all assessments. Any assessment not paid within ten (10) days of the fixed due date shall be deemed delinquent. Delinquent assessments shall bear interest at such a rate as may be established from time to time by the Committee from the

due date until paid; provided, however, that the rate of interest so established shall not exceed the highest rate allowed by any local, state or federal law to which same might be subject. All payments to accounts shall be first applied to interest and then to the assessment payment due.

17. LIEN TO SECURE ASSESSMENTS. Each lot shall be subject to a lien in favor of and enforceable by the Committee for unpaid assessments, which said lien shall also secure a reasonable attorneys fees, including but not limited to, fees for Appellate Court representation incurred by the Committee incident to the collection of such assessments or enforcement of such lien. All such liens shall be subordinate to the lien of any mortgage or any other lien recorded in Office of the Judge of Probate of Jefferson County, Alabama, unless the claim of the association's lien is recorded prior thereto, stating the description of the lot, the name of the record owner, the amount due, and a date when due.

18. BUDGET. The Committee may, if it deems it appropriate, adopt a budget for each calendar year that shall include the estimated funds to defray the Common Expense.

19. INSURANCE. The Committee shall also have the right, but not the responsibility to either (i) purchase insurance for the Common Area, or (ii) make other suitable arrangements for insuring the Common Area; provided, however, that should the Committee not be able to obtain insurance for the Common Area, each lot owner shall be responsible for one-fourteenth (1/14th) of any liabilities incurred by the Committee resulting from its responsibilities in regard to the Common Area.

20. COMMITTEE NOT LIABLE. Notwithstanding the authority delegated to Committee or its representative by this document, neither the

BOOK 114 PAGE 872

Committee as whole, nor the individuals composing it, nor its representative shall be liable for any act performed or for liability of any kind and nature arising from any person serving on or for the Committee.

21. MANAGING REPRESENTATIVE. The Committee is hereby authorized to appoint a manager or representative to perform any or all functions of the Committee as it may deem appropriate, including, but not limited to, supervision and maintenance of the Common Area and the levying and collecting of assessments for the Common Expense.

22. NO WAIVER. The failure of the Committee to enforce any one or more of the provisions of this instrument shall not be deemed as a waiver of the right of the Committee to enforce the provisions of this instrument at any subsequent time. No owner of any portion of the Property nor any other person, corporation, partnership, firm or other entity shall be entitled to any remedy against or to the recovery of any damages from the Committee or any member thereof as the result of the failure or refusal by the Committee or any member thereof to enforce any of the provisions of this instrument or pursue the correction of any violation thereof.

23. ENFORCEMENT. Enforcement of the provisions of this instrument may be by the Committee or by the owner of any portion of the Property by the filing of proceedings at law or in equity against any person, corporation, partnership, firm other entity violating or attempting to violate same. Any party so enforcing the provisions of this instrument shall be entitled to equitable relief, the recovery of actual damages resulting from any such violation, a reasonable attorneys fee, and such other relief as may be deemed appropriate by a court of competent jurisdiction.

24. BINDING EFFECT. The covenants, conditions and other provisions herein contained shall bind and run with the Property forever and shall be binding upon all parties and persons claiming hereunder.

25. AMENDMENT. Declarant reserves and shall have the sole and exclusive right to modify, release or amend any one or more of the covenants, restrictions, and provisions contained herein until such time as it has sold all portions of the Property to parties other than the Declarant. Subsequent to the conveyance of all portions of the Property by Declarant, the provisions of this instrument may be modified and amended by an instrument executed by the owners of a majority of the lots. Any such modification or amendment must be in writing and filed for record with the office of the Judge of Probate of Shelby County, Alabama.

26. EASEMENT FOR ENTRANCE SIGN. Declarant hereby reserves an easement across that portion of lot 1 as designated on the plat of the subdivision for the purpose of constructing and maintaining a sign which will identify the subdivision. This easement shall run in favor of each of the fourteen lot owners in the subdivision.

27. NO REVERTER. No restriction or provision herein is intended to be or shall be construed as a condition subsequent or creating any possibility of a reverter.

28. SEVERABILITY. Invalidation of any one of the provisions of this instrument by a judgment or a court order shall in no way affect the validity of the other provisions of this instrument, which shall remain in full force and effect.

29. RIGHTS RESERVED TO DECLARANT. Any provisions herein to the contrary notwithstanding, Declarant shall have the right to construct,

install and maintain on any portion of the Property owned by Declarant a temporary sales and construction structure which may be maintained and used only during the period of construction of improvements by Declarant. Nothing in this instrument shall be interpreted to prevent Declarant from displaying "for sale" signs and conducting such other activities on or about any portion of the Property owned by Declarant as are reasonably necessary to promote and facilitate the sale of any portion of the Property by Declarant and to enable Declarant to complete the construction of improvements upon any portion of the Property owned by Declarant. Declarant shall also be exempt from the payment of Common Expenses, with respect to each lot owned by Declarant, until such time as Declarant has completed the construction of an office building upon the lot, or, until Declarant shall elect to waive this exemption.

IN WITNESS WHEREOF, this instrument has been executed by the undersigned on this the same date as first hereinabove written.

CAHABA VALLEY PARTNERSHIP

By: J. C. Hodges, III
J. C. Hodges, III (General Partner)

BRENTWOOD PROPERTIES
(General Partner)

By: Avery A. Clenney
Avery A. Clenney
Its President

GIBSON-ANDERSON-EVINS, INC.
(General Partner)

By: L. S. Evins, III
L. S. Evins, III
Its President

STATE OF ALABAMA

JEFFERSON COUNTY

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that J. C. Hodges, III, whose name as General Partner of Cahaba Valley Partnership, an Alabama General Partnership, is signed to the foregoing instrument and who is known to me, acknowledged before me on this date that, being informed of the contents of such instrument, he, as such general partner and with full authority, executed the same voluntarily, for and as the act of said general partnership.

Given under my hand and seal on this 12th day of January 1987.

Sherril H. Goodman, now known as:
Sherril H. Musigdi
Notary Public

My Commission Expires MY COMMISSION EXPIRES JULY 20, 1988



STATE OF ALABAMA

JEFFERSON COUNTY

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Avery A. Clenney, whose name as President of Brentwood Properties, a corporation, in its capacity as a general partner of Cahaba Valley Partnership, an Alabama General Partnership, is signed to the foregoing instrument and who is known to me, acknowledged before me on this date that, being informed of the contents of such instrument, he, as such general partner and with full authority, executed the same voluntarily, for and as the act of said corporation in its capacity as general partner in said general partnership.

Given under my hand and seal on this 12th day of January 1987.

Sherril H. Goodman, now known as:
Sherril H. Musigdi
Notary Public

My Commission Expires MY COMMISSION EXPIRES JULY 20, 1988



BOOK 114 PAGE 876

STATE OF ALABAMA

JEFFERSON COUNTY

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that L. S. Evins, III, whose name as President of Gibson-Anderson-Evins, Inc., a corporation, in its capacity as a general partner of Cahaba Valley Partnership, an Alabama General Partnership, is signed to the foregoing instrument and who is known to me, acknowledged before me on this date that, being informed of the contents of such instrument, he, as such officer and with full authority, executed the same voluntarily, for and as the act of said corporation in its capacity as a general partner in said general partnership.

Given under my hand and seal on this 9 day of January, 1987.



Vanetta Lovell
Notary Public
My Commission Expires February 27, 1990
My Commission Expires _____

BOOK 114 PAGE 877

EXHIBIT "A"

All of the lots in Cahaba Valley Office Park as recorded in Map Book 10 on page 80 in the Office of the Judge of Probate of Shelby County, Alabama.

BOOK 114 PAGE 878

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

1987 FEB 13 AM 8:45

Thomas R. Scarborough, Jr.
JUDGE OF PROBATE

1. Recording Fee	\$ <u>35.00</u>
2. Indexing Fee	<u>1.00</u>
TOTAL	<u>36.00</u>