

1356

STATE OF ALABAMA)
COUNTY OF SHELBY)

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" and Exhibit "B" attached hereto (280 Associates, Ltd. shall hereinafter be referred to as the "Declarant" and the property described on Exhibit "A" shall hereinafter be referred to as the "Declarant's Property");

WHEREAS, the Declarant desires to convey a portion of its property as described on Exhibit "B" hereto (the "Property") to one or more purchasers thereof with the Declarant retaining Declarant's Property for its own respective use and development;

NOW, THEREFORE, the Declarant does, 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 Declarant as owner of the Declarant's

Land Title

Property, and shall inure to the benefit of and be binding upon each successor in interest thereof.

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 in which all of the inventory is stored and sold indoors.

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

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

(d) Bank or lending institutions.

(e) Hotels, motels or motor courts.

(f) Catering shop.

(g) Restaurant or coffee shop except drive-in restaurants shall not be permitted.

(h) Library or museum.

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

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

1.02 Garbage and Refuse. No lumber, metals, automotive products, 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, parking lot, fence, or other improvement 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) a grading, storm drainage, and landscaping plan with respect to the Property, and (c) 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 ten business 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 Frank Kovach, Jr. and Billy D. Eddleman. 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 member shall have full authority to designate a successor. At any

time, the Declarant shall have the power, through a duly recorded written instrument, to change the membership of the Committee or 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 its 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 DECLARANT DOES 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:

(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 and Sewer 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, two copies of such plans and specifications, as approved, shall be deposited with the Committee, one copy shall be retained for the permanent records of the Committee, and one 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, 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 at the expense of the Owner of the Property. Notwithstanding the aforesaid, after the expiration of one year from completion of any such improvement or structure, such improvement or structure shall be deemed to comply with all the provisions hereof unless notice to the contrary shall have been recorded in the Office of the Judge of Probate of Shelby County, Alabama, or legal proceedings shall have been instituted to enforce such compliance.

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 Shelby County prior to the recordation among the land records of Shelby County of the deed (or mortgage) conveying the property in question to such purchaser (or subjecting the same to such mortgage).

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 encumbrancer in good faith and for value, or as to any title insurer, such certificate shall be conclusive evidence that all

BOOK 248 PAGE 52

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

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

BOOK 248 PAGE 53

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. The location of any structure, alteration or addition 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, by the Committee. The Committee shall use as its general guidelines 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.

3.03 Signage. No sign shall be erected or maintained at any location within the Property which is not first approved by the Committee. The design of all signs to be erected on the Property shall also be approved by the Committee.

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 of the Committee. The Committee shall use as its general guidelines 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. All plans and specifications shall be evaluated as to harmony of external design and location in relation to surrounding structures and topography. The exterior design of the structures shall to the extent feasible be compatible with the existing structures and uses within the Declarant's Property.

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 Declarant, its legal representatives, heirs, successors and assigns until the first to occur of either of the following: (a) December 31, 2009; or (b) the owner(s) of all of the Declarant's Property shall, in its discretion, terminate this Declaration by executing and filing a written statement to that effect with the Probate Office of Shelby County, Alabama.

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 Declarant 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 it may deem appropriate. No delay or failure on the part of the Declarant to initiate an available remedy set forth herein shall be held to be a waiver of the Declarant or an estoppel of the Declarant to assert any right available to it 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 Declarant 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 Declarant, 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 ten (10) business 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, addressed to:

280 Associates, Ltd.
2700 U.S. Highway 280, Suite 90
Birmingham, Alabama 35223
Attention: Frank Kovach, Jr.

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 the owner at the address stated in the request, or in the absence thereof, to the owner at the address that tax notices are to be mailed with respect to its portion of the Property.

BOOK 248 PAGE 58

IN WITNESS WHEREOF, the undersigned as the owner of the Property has caused this Declaration to be executed as of the 24 day of July, 1988.

280 ASSOCIATES, LTD., a limited partnership

By: Frank Kovach, Jr.

Frank Kovach, Jr.
General Partner

By: Billy D. Eddleman

Billy D. Eddleman
General Partner

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 24 day of July, 1988.

[Signature]
Notary Public

My Commission Expires 1-6-92

BOOK 248 PAGE 59

EXHIBIT "A"

Lot 12 according to the Survey of Cahaba Park South as recorded in Map Book 9, Page 164 in the Probate Office of Shelby County, Alabama.

Lot 13A according to the Survey of Cahaba Park South, Resurvey No. 1, as recorded in Map Book 12, Page 53 in the Probate Office of Shelby County, Alabama.

EXHIBIT "B"

Lot 11 according to the Survey of Cahaba Park South as recorded in Map Book 9, Page 164 in the Probate Office of Shelby County, Alabama.

Lot 13D according to the Survey of Cahaba Park South, Resurvey No. 1, as recorded in Map Book 13, Page 57 in the Probate Office of Shelby County, Alabama.

BOOK 248 PAGE 61

CERTIFY THAT
INSTRUMENT WAS

89 JUL 27 AM 8:36

James H. Cummings
JUDGE OF PROBATE

1. Deed Tax	\$	_____
2. Mtg. Tax		_____
3. Recording Fee		<u>42.50</u>
4. Indexing Fee		<u>3.00</u>
TOTAL		<u>45.50</u>