

This instrument prepared by:  
John E. Hagefstration, Jr.  
Bradley, Arant, Rose & White  
1400 Park Place Tower  
2001 Park Place  
Birmingham, Alabama 35203

### DECLARATION OF EASEMENTS

THIS DECLARATION OF EASEMENTS (the "Declaration") is made on or as of April \_\_/\_\_, 1994, by BIRMINGHAM REALTY COMPANY, an Alabama corporation (the "Declarant").

#### RECITALS:

A. Declarant is the owner of Lot 1, Oak Mountain Commerce Place (the "Shopping Center"), as recorded in Map Book 18, page 58, in the Probate Office of Shelby County, Alabama (the "Probate Office").

B. Lawyers Title Exchange Company-BKC ("LTEC") is the owner of Lot 2, Oak Mountain Commerce Place, as recorded in Map Book 18, page 58, in the Probate Office of Shelby County, Alabama (the "Outparcel").

C. In connection with the acquisition of the Outparcel from LTEC, Declarant has agreed to grant to AmSouth Bank N.A. certain easements and rights with respect to access, ingress, egress, parking, pedestrian and vehicular traffic and utilities over and across the Shopping Center for the use and benefit of the owner of the Outparcel, and their respective agents, customers, patrons, guests, invitees, licensees, employees, servants, contractors and mortgagees.

NOW, THEREFORE, Declarant hereby declares that the Shopping Center and the Outparcel shall be benefitted and burdened by the following easements and rights:

1. Cross-usage Easements. Declarant hereby creates, declares and imposes the following easements:

i) Pedestrian Easements. Non-exclusive easements for the purpose of pedestrian traffic over, across, to and from the Shopping Center and the Outparcel, on all private streets and roads now or hereafter abutting or located thereon, all

walkways, sidewalks, concourses and plazas now or hereafter abutting or located thereon, all parking areas now or hereafter abutting or located thereon, all entrances or exits now or hereafter abutting or located thereon;

ii) Vehicular Easements. Non-exclusive easements for the purpose of providing ingress and egress for vehicular traffic between the Outparcel and the Shopping Center (for access to Highway 31) over and across the Shopping Center (in areas designated by Declarant) and generally being in an area 24 feet in width located on the south and north sides of the Outparcel as shown on the attached Exhibit A; limited, however, to those parts of the Shopping Center and the Outparcel that are from time to time improved or otherwise made available for vehicular access, as such parts of the Shopping Center or Outparcel may be reduced, enlarged, relocated or altered from time to time;

iii) Utility Easements. Non-exclusive easements for the construction, installation, operation, maintenance, repair, replacement and removal of water lines and systems, telephone lines and systems, cable television lines and systems, gas lines and systems, sanitary sewer lines and systems, electrical lines and systems, storm sewers, drainage lines and systems, and any other utility lines or systems hereafter developed to serve the Shopping Center or the Outparcel; provided, however, that such easements, to the extent the same benefit the Outparcel, shall be located in such areas of the Shopping Center as approved by Declarant; and

iv) Encroachment Easements. Non-exclusive, perpetual easements for the encroachment of any improvements or pavement over any common boundary between the Shopping Center and the Outparcel, to the extent that any such encroachment arises out of, or are necessitated by, normal construction deviations and tolerances.

2. Unimpeded Access. No barricade or other divider will be constructed between the Shopping Center and the Outparcel, and the owners thereof shall do nothing to prohibit or discourage the free and uninterrupted flow of pedestrian and vehicular traffic among the Shopping Center and the Outparcel in the areas designated for such purpose by the owners of such parcels.

3. Use of Easements. Subject to any reasonable rules and regulations adopted for the use of the Shopping Center by the owners thereof, the use of all easements created by this Declaration will, in each instance, be non-exclusive for the use and benefit of the owners of the Shopping Center and the Outparcel.

4. Maintenance of Easement Areas. Except to the extent that such areas might be operated and maintained by public authorities or utilities or that such operation and maintenance are otherwise provided in this Declaration, the owner of the Shopping Center and the Outparcel will operate and maintain, in each case at its own expense, all the areas of its parcel that are subject to the pedestrian, vehicular, parking and other easements created by this Declaration.



5. Duration of Easements. This Declaration and easement created hereby will continue for a term of twenty (20) years from the date of this Declaration and will thereafter continue in full force and effect so long as any easement created hereby is used by the owner of the Shopping Center or the Outparcel.

6. No Dedication. Nothing contained in this Declaration will be deemed to constitute a gift, grant or dedication of any part of any parcel to the general public or for any public purpose whatsoever, it being the intention of the Declarant to this Declaration will be strictly limited to private use of the owners in whatever respective permites.

7. Severability. The provisions of this Declaration are severable, and in the event of any provisions hereof shall be held invalid or unenforceable by any court of competent jurisdiction, such holdings shall not invalidate or render unenforceable any other provision hereof.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed by its duly authorized officer on or as of the day and year first above written.

BIRMINGHAM REALTY COMPANY

By: Stephen M. House  
Its: Senior Vice President

STATE OF ALABAMA     )  
                                  :  
JEFFERSON COUNTY    )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Stephen W. House, whose name as Senior Vice President of BIRMINGHAM REALTY COMPANY, a corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he as such officer, and with full authority, executed the same voluntarily for and as the act of said corporation.

19 94.     Given under my hand and seal of office this 2 day of May, A.D.

[Signature]  
Notary Public

[NOTARIAL SEAL]

My commission expires: 11-13-94

Inst # 1994-14611