

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

### DECLARATION OF RESTRICTIVE COVENANTS

BIRMINGHAM REALTY COMPANY, an Alabama corporation (the "Declarant"), has executed this Declaration of Restrictive Covenants, and caused it to be filed in the Probate Office of Shelby County, Alabama (the "Probate Office") in order to establish the restrictive covenant hereinafter set forth.

### RECITALS:

A. Declarant is the owner of a shopping center development to be known as Oak Mountain Commerce Place, to be partially constructed on Lots 1, 4 and 6, according to the map and survey of Oak Mountain Commerce Place, as recorded in Map Book 18, page 58, in the Probate Office (the "Restricted Property").

B. Simultaneously herewith, Declarant is conveying Lot 4-A, according to the map and survey of Oak Mountain Commerce Place, as recorded in Map Book 18, page 58 in the Office of the Judge of Probate of Shelby County, Alabama (the "Outparcel") to James D. Wadsworth ("Wadsworth"), and, in connection therewith, Declarant desires to establish certain restrictions on the Restricted Property as hereinafter set forth.

NOW, THEREFORE, the Declarant hereby declares that the Restricted Property is subject to the following:

1. Restrictions on Use.

a. For so long as Wadsworth shall operate a convenience store, gasoline sales outlet or car wash, or any combination thereof, on the Outparcel, no other convenience store, gasoline sales outlet or car wash, or any combination thereof shall be allowed to operate on Lot 4 of the Restricted Property.

b. Until June 1, 1999, no convenience store, gasoline sales outlet, car wash or any combination thereof, shall be allowed to operate on Lots 1 and 6 of the Restricted Property.

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12:11 PM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
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2. Effect of Covenants. The covenants set forth herein shall run with the title to the Restricted Property, and shall bind the successors and assigns of Declarant. The restrictions contained herein are expressly for the benefit of Wadsworth.

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed on or as of the day and year first shown above.

BIRMINGHAM REALTY COMPANY  
By: *Russell M. Cunningham III*  
Its: *Secy*

STATE OF ALABAMA    )  
                                  :  
JEFFERSON COUNTY    )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that *Russell M. Cunningham III*, whose name as *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.

Given under my hand and seal of office this *9<sup>th</sup>* day of *May*, 1994.

*Paul E. Hatcher*  
Notary Public

[NOTARIAL SEAL]

My commission expires: *11-13-94*

## CONSENT OF MORTGAGEE

AmSouth Bank N.A., a national banking association ("Mortgagee"), in its capacity as the owner and holder of a mortgage (the "Mortgage") on the Restricted Property, has executed this Consent in order to (i) acknowledge and agree to the terms and provisions contained in the attached Declaration of Restrictive Covenants and (ii) to agree that the provisions of such document shall survive any foreclosure of the Mortgage or any conveyance in lieu of foreclosure.

IN WITNESS WHEREOF, AmSouth Bank N.A. has caused this instrument to be executed, acknowledged and delivered as of May 17, 1994, for the purposes stated above.

AMSOUTH BANK N.A.

By: Arthur J. Sharbel, III  
Its: Vice President

STATE OF ALABAMA     )  
                                      :  
JEFFERSON COUNTY     )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Arthur J. Sharbel, III, whose name as Vice President of AMSOUTH BANK N.A., a national banking association, 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 association.

Given under my hand and seal of office this 17 day of May, 1994

Janette C. Patterson  
Notary Public

[NOTARIAL SEAL]

My commission expires: March 27, 1998

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