

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

STATE OF ALABAMA)
COUNTY OF SHELBY)

DECLARATION OF PROTECTIVE COVENANTS

THIS Declaration of Protective Covenants is made by BIRMINGHAM REALTY COMPANY, an Alabama corporation ("Declarant") on or as of this the 28th day of June, 1994.

WITNESSETH:

WHEREAS, Declarant is the owner of Lot 7, 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 "Property"); and

WHEREAS, Declarant desires to subject the Property to, and impose upon the Property, mutual and beneficial restrictions, covenants, terms, conditions and limitations (herein referred to collectively as "Restrictions"), for the benefit of the Property and the present and future owners of the Property;

NOW, THEREFORE, Declarant does hereby proclaim, publish and declare that the Property and all portions thereof, including any resubdivision thereof into smaller lots or parcels, is subject to, and shall be held, conveyed, hypothecated or encumbered, rented, used, occupied and improved, subject to the Restrictions, which shall run with the land and shall be binding upon Declarant and all parties having or acquiring any right, title, or interest in and to the Property or any part of parts thereof.

ARTICLE I

MUTUALITY OF BENEFIT AND OBLIGATION

The restrictions and agreements set forth herein are made for the mutual and reciprocal benefit of each and every parcel of the Property and are intended to create mutual, equitable servitudes upon each of said parcels in favor of each and all the other parcels therein, to create reciprocal rights between the respective owners of said parcels; and to create a privity of contract and estate between the grantees of said parcels, their heirs, successors and assigns.

ARTICLE II

**ARCHITECTURAL CONTROL COMMITTEE AND REQUIREMENTS
OF CONSTRUCTION**

Section 2.1 Concept. It is intended that the Property will be developed as part of a commercial retail and warehouse park of high esteem and quality improvements (the "Development").

Section 2.2 Architectural Control Committee. The Architectural Control Committee (herein referred to as the "Committee") shall be composed of not less than two

Inst # 1994-21077
07/05/1994-21077
01:14 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
33.50
011 MCD

(2) members at all times. For so long as Declarant owns any portion of the Property, the membership of the Committee shall be appointed by the Declarant and thereafter by a majority of the owners of the Property, with each lot or parcel owner having the right to cast one vote to select the members of the Committee. The initial Committee members upon recording of these covenants will consist of R.M. Cunningham, III and S.W. House. The primary duty of the Committee shall be to examine and approve or disapprove all plans, including site plans, for construction of improvements on parcels within the Development in accordance with the provisions of these covenants. The Committee shall have such other responsibilities, duties, and authority as provided for herein, but the Committee shall not have any responsibility, duty, power, or authority not provided for herein.

Section 2.3 Plan Approval. All plans and specifications for any structure or improvement whatsoever to be erected on or moved upon or to any parcel within the Development, and the proposed location thereof on any parcel or parcels, as well as the construction materials, roofs, and any later changes or additions to the initial improvements after initial approval thereof, and any remodeling, reconstruction, alterations or additions thereto on any parcel shall be subject to and shall require the approval in writing of the Committee before any work is commenced. Construction may not be started before receipt of a Letter of Approval from the Committee. The proposed plans must be delivered to the general office of Declarant for approval at least thirty (30) days prior to proposed date that construction will be commenced and will be retained by the Committee. Each such plan must include, in addition to such other matters as the Committee may reasonably require the following:

2.3.1 All plans for structures shall be not less than 1/8" - 1' scale.

2.3.2 All plans must take into consideration the particular topographic and negative characteristics of the parcel or parcels involved.

2.3.3 All plans must state the elevations of all sides of the proposed structures as such sides will appear after finished grading of the parcel has been accomplished.

2.3.4 The foundations and floor plan(s) shall show the existing grade on each elevation in order that the extent of cut and/or fill areas may be easily and clearly determined.

2.3.5 The site plan shall show all outlines, setbacks, drives, fences, and underground trench locations at a scale of 1" - 20'. After the plan and site plan for the structure is approved, the improvements or other structure may be staked out and construction started. All tree cutting and grading will be performed as to protect and maintain a natural surrounding for the parcel or parcels.

Section 2.4 Design Criteria, Structure.

2.4.1 The Committee must approve all exterior materials and colors prior to commencement of any construction. It is the intent of Declarant that all structures constructed as part of the Development incorporate as many natural surfaces and textures as possible.

2.4.2 All building(s) shall comply with the Southern Standard Building Code, and all rules and regulations of the City of Pelham, the Shelby County Health Department and the Alabama Department of Environmental Management, as applicable, as well as with the rules and regulations of any other governmental agency having jurisdiction over the Property.

2.4.3 Dust abatement and erosion control measures (consistent with "best management practices") shall be provided by the contractor or owner during all stages of construction.

2.4.4 The maximum development density for parcels shall be 80 percent of the total acreage of subject parcel/development. This requirement means that a maximum of 80 percent of a parcel/development may be developed with impervious materials (including buildings, parking lots, sidewalks, except where sidewalks are minor to a landscaped courtyard, etc.), and further, that a minimum area of 20 percent of a parcel/development must be developed as green-space/planting areas. The development density shall be determined by acreage or area within the property boundary of a parcel/development. Green-space/planting areas outside of the property line shall not be considered as part of the required (20 percent) green-space planting areas.

2.4.5 No structure shall be greater than one (1) story or 25 feet in height above the average ground level (berms shall not be constructed to raise the height of any structure).

2.4.6 No structure shall be located on any parcel or parcels nearer to the front line or nearer to the side street line than the minimum building setback lines shown on the recorded plat. In any event, no building shall be located on any parcel nearer than 35 feet to the front line, or located nearer than 35 feet to an interior parcel line. No building shall be located nearer than 35 feet to the rear parcel line. For the purpose of this covenant, eaves, steps and open porches shall not be construed to permit any portion of a building on a parcel to encroach upon another parcel.

2.4.7 All building debris, stumps, trees, etc., must be removed from each parcel by builder as often as necessary to keep the building and parcel attractive. Such debris shall not be dumped in any area of the Development without approval of Declarant.

2.4.8 At all time during construction, the builder must keep the building clean, cut all grass and otherwise maintain each parcel in a neat and orderly fashion.

2.4.9 The landscaping shall provide a suitable setting for the building and will maintain as much of a natural surrounding as possible. All structures shall have a minimum 10-foot wide planting area around the perimeter of the parcel (except at entrance and exit points) and the planting area shall incorporate such plants, either planted or natural existing, as may be required by the Committee.

Section 2.5 No Liability for Approval. Neither the Committee nor any architect nor agent thereof nor Declarant shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the foregoing provisions, nor for any structural or other defects in any work done according to such plans and specifications and each owner of a parcel waives any such claim against the Committee, and the officers, directors, employees, affiliates of the Committee, the Declarant, and all people working under their direction.

Section 2.6 Letter of Approval. The Committee shall either issue its Letter of Approval, its denial, grant a request for variance(s), or specify the conditions under which it would issue its Letter of Approval within ten (10) working days from the receipt of the plans, specifications, and/or request for variance(s). If such plans and specifications, and/or request(s) for variances are not approved, disapproved or modified within said time period, then the plans, specifications, and/or requested variance(s) shall be deemed not to have been approved by said Committee; provided, however, that if the Committee shall fail to act within the foregoing ten (10) working day time period, and shall fail to do so within ten (10) calendar days after receipt of a second written request to do so, such failure to act shall be deemed an approval of the plans and specifications and/or request for variance.

Section 2.7 Amendments. The Committee reserves the right to amend the provisions of this Article from time to time at its discretion, except that the Committee shall have no right to make any amendment retroactive or to impose on any property no longer owned by Declarant any restriction which would require the destruction of any improvements already constructed thereon (or the modification of any plans for proposed improvements which have been approved prior to the date of such amendment) or which would impose any greater or additional requirements with respect to such property.

ARTICLE III

MINIMUM LOT SIZE

No parcel shall be subdivided (i) without the consent of the Declarant, or (ii) to create a parcel containing less than 20,000 square feet.

ARTICLE IV

GENERAL PROHIBITIONS AND REQUIREMENTS

Section 4.1 Responsibility for Upkeep. It shall be the responsibility of each parcel owner to prevent any unclean, unsightly or unkept conditions of buildings or grounds on its parcel that would tend to decrease the beauty of the specific area or of the Development as a whole.

Section 4.2 Prohibited Use. Except as specifically provided for herein or in any amendment to this Declaration, no parcel shall be used and occupied for any of the following purposes:

- (i) food supermarket, grocery store, meat, fish or vegetable market;
- (ii) hotel or motel;
- (iii) a convenience store, gasoline sales outlet, or car wash, or any combination thereof;
- (iv) penny arcade;
- (v) funeral parlor;
- (vi) night club, cabaret or liquor bar;
- (vii) massage parlor;
- (viii) pornographic video and/or book store;
- (ix) laundromat;
- (x) Drug store/pharmacy;
- (xi) Cleaners;
- (xii) any type parimutuel gambling, bingo parlor, or night club;
- (xiii) any business whose sales of hamburgers, biscuits and/or chicken exceeds 50% of its gross sales;
- (xiv) an operation primarily used as a beauty salon or barber shop;
- (xv) flea market;
- (xvi) skating rink; or
- (xvii) until expiration thereof, for the uses or purposes prohibited by the terms of that certain Short Form Lease of a portion of Lot 1 of Oak Mountain Commerce Place between Declarant and Winn-Dixie Montgomery, Inc., recorded or to be recorded in the Probate Office of Shelby County, Alabama.

Section 4.3 Right to Enter; Liens. All parcels, whether occupied or unoccupied, and any improvements placed thereon, shall at all times be maintained in a neat and attractive condition and in such a manner as to prevent their becoming unsightly by reason of unattractive growth on such parcel or the accumulation of rubbish or debris thereon. In order to implement effective control of this item, Declarant reserves for itself and its successors and assigns the right, after ten (10) days notice to any parcel owner, to enter upon any parcel with such equipment and devices as may be necessary for the purpose of repairing or removing signage or improvements that are in disrepair, mowing, removing, clearing, or cutting underbrush, weeds or other unsightly growth and trash which in the opinion of Declarant or the Committee detracts from the overall beauty and safety of the Development. Declarant's entrance upon any parcel for such purposes shall occur between

the hours of 7:00 A.M. and 6:00 P.M. on any day except Sunday and shall not constitute a trespass. Declarant and/or the Committee may charge the owner a reasonable cost for such services, which charge, if not paid within thirty (30) days, shall constitute a lien upon such parcel enforceable by appropriate proceedings at law or equity. The provisions of this paragraph shall not be construed as an obligation on the part of Declarant or the Committee to mow, clear, cut or prune any parcel, nor to provide garbage or trash removal services.

Section 4.4 Service Yard. Each parcel shall have a service yard, or yards, adequate for the handling of waste and garbage and the loading and unloading of vehicles. All service yard(s) shall be paved, have access to a public street or alley, be located to the side or rear of development and/or building, be enclosed by a structure on all four sides with access through a gate, said structure to be at least six feet tall and adequate to conceal from visibility the service yard, equipment and material stored within the wall or fence.

Section 4.5 Signage Regulations. The signage regulations for the Development shall be as follows:

- (i) All signs shall be submitted for, reviewed, and approved by the Committee and shall not be erected or displayed without prior approval of the Committee. Generally, the only signs exempt from the Committee's review and approval are governmental signs, public notices, instructional signs, and traffic control and warning signs, symbols and insignia as may be necessary and required by governmental entities for the public health, safety and welfare.
- (ii) The development criteria regarding signs for freestanding retail structures shall be as follows:
 - (a) All signs must be within the boundary/property line;
 - (b) Only one building sign or one permanent free-standing, monument type sign will be allowed on each fronting street. Multi-tenant buildings which are designed to provide individual exterior entry to tenants will be allowed to incorporate tenant identification signage on the exterior of each tenant's space, provided said signage will not exceed 12 square feet per tenant sign.
 - (c) The top of monument signs shall not extend higher than 5 feet above ground level (no artificial berms shall be constructed to raise the height of the sign). No monument sign shall contain more than 50 square feet in sign face area. The sign face area for building signs will be determined by measuring the outermost perimeter of all characters, letters and or messages of the sign. Building signs shall not project more than 18 inches from the building.
- (iii) No sign shall be painted or pasted directly on the surface of any building, wall, fence or window.
- (iv) There shall be no flashing signs. Signs can be illuminated either directly or indirectly (internally or externally) but all illumination shall be kept at a constant intensity at all times when in use and shall not exhibit sudden or marked changes in lighting effects. No rotating, flashing, blinking, fluctuating, or otherwise animated signs shall be permitted.

- (v) All on-premise construction, real estate ("For Sale" or "For Rent") signs or other temporary signs must be approved by the Committee. In general, only one temporary business located sign will be allowed on a parcel, except in the case of corner lots or through lots, on which will be permitted two (2) such signs. Any approved temporary business location sign may provide information regarding the owner, developer, architect, and designer, real estate agents, etc., for subject parcel.
- (vi) Except as otherwise covered, stated or excepted above, all signage regulations of the City of Pelham (or any other governmental agency having jurisdiction over such matters) shall also apply.

Section 4.6 Temporary Structures. No structure of a temporary character shall be placed on any portion of the Property without approval of the Committee.

Section 4.7 Restoration. Any building or other structure on any parcel in the Development which may be destroyed in whole or in part for any reason must be restored to a sightly condition with reasonable promptness, provided that in no event shall such debris remain on any parcel longer than sixty (60) days.

Section 4.8 Off Street Parking. Each parcel owner shall provide adequate off street parking to accommodate all existing and future needs for employees, visitors and company vehicles. Parking spaces shall meet the City of Pelham's off street parking requirements. Each space shall be a minimum of nine (9) feet wide, unless designated as handicapped parking. Areas designated for automobile use shall not be used for trucks, commercial vehicles and/or material storage. No parking will be permitted in open fields, on streets, or vacant lots. Inoperative or junk vehicles may be towed away by Declarant or the Committee at Owner's expense.

Section 4.9 Off Street Loading. Truck and trailer maneuvering areas shall be entirely off street and no backing shall be allowed into or from the public street. Truck maneuvering areas shall be one-hundred twenty-five (125) feet in depth and truck berths a minimum of twelve (12) feet wide. No loading areas shall be permitted on the front of any building or on any side facing a public street. Additional screening and/or beautification may be required by the Committee adjacent to any loading facility.

Section 4.10 Exterior lighting. Exterior lighting fixtures shall not extend higher than 22 feet as measured from the ground and must be constructed to direct and control the beam within the subject parcel.

Section 4.11 Certain Action Prohibited Without the Prior Written Consent of the Committee.

- (i) to the extent of the interest of the owner of a parcel, no facilities, including poles and wires, for the transmission of electricity, telephone, cable or other utility services shall be placed or maintained above the surface of the ground of any parcel and no external or outside antennas of any kind shall be maintained, except on the rear portion of a parcel; and
- (ii) no boat, boat trailer, house trailer, trailer, motor home and any similar items shall be stored in the open on any parcel for a period of time in excess of twenty-four (24) hours.

Section 4.12 Animals. No birds, livestock, animals, or insects shall be kept or maintained on any parcel without the express written consent of the Committee.

Section 4.13 Accumulation of Refuse. No lumber, metals, or bulk materials shall be kept, stored or allowed to accumulate on any parcel, except building materials during the

course of construction of any approved structure. No refuse or trash shall be kept, stored or allowed to accumulate, except between scheduled pick-ups.

Section 4.14 Pipes. To the extent of the interest of the owner of a parcel, no water pipe, gas pipe, sewer pipe, or drainage pipe shall be installed or maintained above the surface of the ground on any parcel, except hoses and movable pipes used for irrigation purposes.

Section 4.15 Mining. To the extent of the interest of the owner of a parcel, and except for construction approved hereunder, no parcel shall be used for the purpose of boring, mining, quarrying, exploring for or removing oil or other hydrocarbons, minerals, gravel, or earth.

ARTICLE V

EASEMENTS

Section 5.1 Utility Easements Reserved. Declarant reserves for itself, its successors and assigns, the right to use, dedicate and/or convey to the State of Alabama, Shelby County, the City of Pelham, and/or to the appropriate utility company or companies, rights-of-way or easements on, over and under the Property to erect, maintain and use all utility services, including electric and telephone poles, wires, cables, conduits, storm sewers, sanitary sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas sewer, water, or other public conveniences or utilities, on, in and over strips of land along the property line of each parcel, as shown on the recorded plat, with a further easement reserved to cut or fill at a 3-in-1 slope along the boundaries of all public streets or roads built in the Development.

Section 5.2 Drainage. Each parcel within the Development must include plans to handle drainage flow which will be in keeping with the overall drainage plan for Oak Mountain Marketplace and Oak Mountain Commerce Place as adopted from time to time. Drainage flow shall not be obstructed nor be diverted from drainage swales, storm sewers and/or utility easements as designated herein, or as may hereafter appear on any plat of record in which reference is made to these covenants. In particular, it is noted that portions of Lot 7 have been contoured to serve as a storm water drainage retention pond for the Development. No improvements may be constructed on such portions of Lot 7, nor may the owner or owners thereof make any modifications thereto which would seek to divert or diminish the drainage from or to such area. Declarant and/or the Committee reserves the specific right to enter upon such portions of Lot 7 from time to time to make such repairs or modifications to the drainage retention pond and related land as may be needed or useful in order to keep the same in working condition, and the reasonable pro-rata cost thereof shall be paid by each parcel owner within the Development which cost, if not paid within thirty (30) days after delivery of an invoice therefor from Declarant or the Committee, shall constitute a lien on such parcel or parcels which shall be enforceable in the same manner as provided in Section 4.3 hereof.

Section 5.3 Additional Easements. Declarant reserves the right to impose further restrictions and to grant or dedicate additional easements and roadway rights-of-way on any unsold parcels in the Development.

Section 5.4 Utilities. All on-site utility service lines must be underground and metered at a location approved by the Committee.

ARTICLE VI

ENFORCEMENT; PROTECTION OF MORTGAGES

Section 6.1 Enforcement. In the event of a violation or breach of any of these restrictions, or any amendments thereto, by any property owner, or family of such owner, or agent of such owner, the owner(s) of parcel(s), Declarant or any party to whose benefit these restrictions inure shall have the right to proceed at law or in equity to compel compliance with the terms and conditions hereof, to prevent the violations 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 an aggrieved party to invoke an available remedy set forth herein shall be held to be a waiver of that party or an estoppel of that party or of any other party to assert any right available to him upon the recurrence or continuance of said violation of the occurrence of a different violation.

Section 6.2 Protection of Lien of Mortgage. No violation or breach of or failure to comply with any provision of this Declaration and no action to enforce any such provision shall affect, defeat, render invalid or impair the lien of any mortgage taken in good faith and for value and perfected by recording in the appropriate office, prior to the time of recording in said office of an instrument describing the parcel and listing the name or names of the owner or owners thereof and giving notice of such violation, breach, or failure to comply; however, any purchaser on foreclosure or person accepting a deed in lieu thereof shall take title to such property subject to the terms of this Declaration.

ARTICLE VII

GRANTEE'S ACCEPTANCE

The grantee of any parcel subject to the coverage of these Restrictions, by acceptance of the deed or other instrument conveying an interest in or title to, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent owner of such parcel, shall accept such deed or other contract upon and subject to each and all of these Restrictions and the agreements herein contained.

ARTICLE VIII

TERM AND MODIFICATION

Unless sooner terminated, these Restrictions shall run for a term of twenty (20) years from the date hereof, after which, with the consent of Declarant (or its successors or assigns), they may be automatically extended for successive periods of five (5) years. Unless terminated, these Restrictions shall run with the land and can be changed, modified, amended, altered or terminated only with the approval of Declarant, or after Declarant has sold all of the Property, by a majority of the owners of the lots or parcels in the Development, with each such lot or parcel owner having one (1) vote. Further, for so long as Declarant owns any of the Property, Declarant reserves the right at any time, and from time to time, to modify, amend or supplement these Restrictions by a written amendment recorded in the Probate Office of Shelby County, Alabama, including the right to subject additional property to the Restrictions, or to remove any portion of the Property then owned by Declarant therefrom.

ARTICLE IX

SEVERABILITY

Every one of the Restrictions is hereby declared to be independent of, and severable from the rest of the Restrictions and of and from every other one of the Restrictions and of and from every combination of the Restrictions. Invalidation by any court of any Restriction contained in this instrument shall in no way affect any of the other Restrictions which shall remain in full force and effect.

ARTICLE X

ASSIGNMENT OF RIGHTS TO AN ASSOCIATION; NO LIABILITY

Section 10.1 Assignment of Rights to Association. Declarant reserves the right to form an association which shall be created for the purpose of carrying out the terms and conditions of these Restrictions (the "Association"). Declarant further reserves the right to assign or delegate all or any part of its rights or obligations hereunder to the Committee or the Association. Upon any such written assignment or delegation, Declarant shall be relieved of the rights and obligations so assigned or delegated.

Section 10.2 Director, Officer and Committee Member Liability. The directors and officers of any association formed by Declarant, and the members of the Committee shall not be personally liable to the owners, the Declarant or the Association for any mistake of judgment or for any other acts or omissions of any nature whatsoever (including, without limitation, any mistake in judgment, negligence, or nonfeasance arising out of or in connection with approval or disapproval or failure to approve any plans submitted to the Committee), except for wilful misconduct.

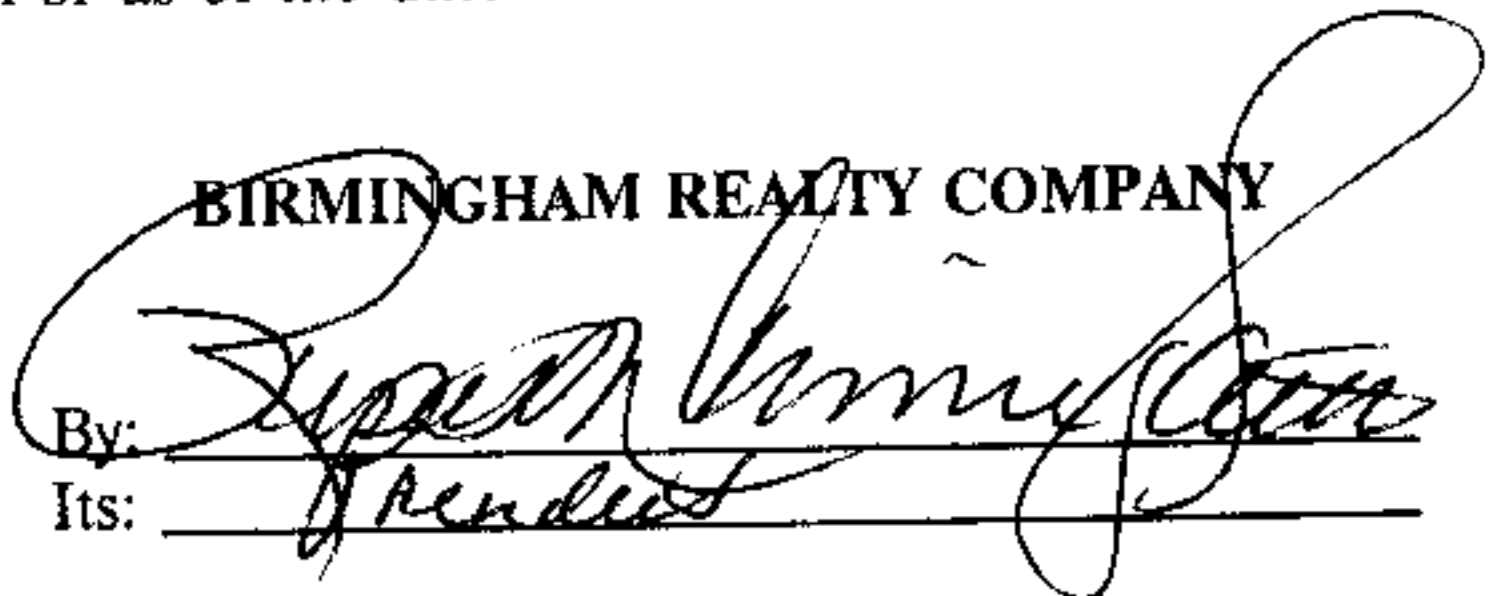
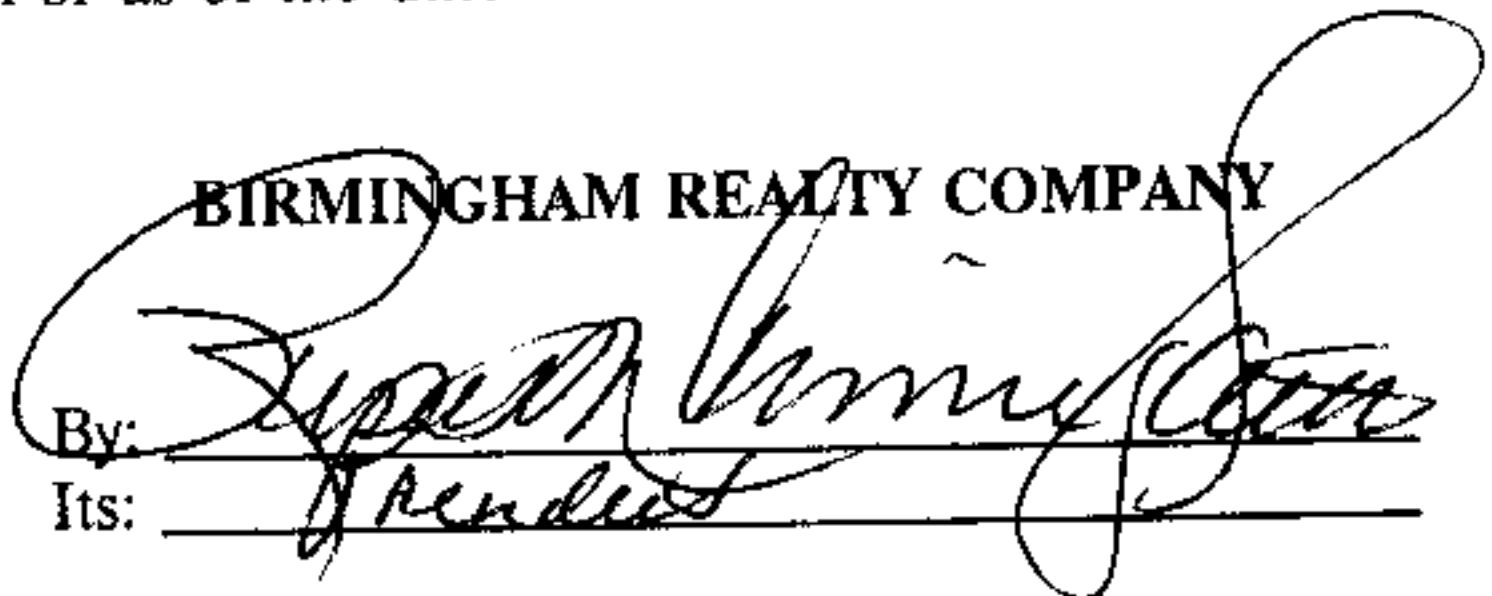
ARTICLE XI

CAPTIONS

The captions preceding the various paragraphs and subparagraphs of these Restrictions are for the convenience of reference only, and none of them shall be used as an aid to the construction of any provision of the Restrictions.

Wherever and whenever applicable, the singular from 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.


IN WITNESS WHEREOF, Declarant has caused these restrictions to be executed by a duly authorized officer on or as of the date first above written.

BIRMINGHAM REALTY COMPANY
By: 
Its: 

AmSouth Bank N.A., as the holder of a mortgage on the Property, joins in the execution of this Declaration for the sole purpose of consenting to the terms thereof, and agrees that its mortgage shall be and hereby is made subordinate and subject to the terms of this Declaration.

Executed this 28th day of June, 1994.

AMSOUTH BANK N.A.

By: 
Its: Vice President

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

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 Declaration of Protective Covenants, and who is known to me, acknowledged before me on this day that, being informed of the contents of the Declaration of Protective Covenants, 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 official seal, this the 20th day of June, 1994.

R. Collier Colvin
Notary Public

[NOTARY SEAL]

My commission expires: Aug 13, 1995

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Samuel M. Fortson, 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/she 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 28 day of June, 1994.

Jeannette C. Patterson
Notary Public

[NOTARIAL SEAL]

MY COMMISSION EXPIRES MARCH 24, 1995

My commission expires: _____

Inst # 1994-21077

Inst # 1994-21077