

STATE OF ALABAMA)
 :
COUNTY OF SHELBY)

DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION (hereinafter referred to as the "Declaration") is made as of the 7th day of July, 1994 by BROOK HIGHLAND LIMITED PARTNERSHIP., an Alabama limited partnership (hereinafter referred to as "Owner").

W I T N E S S E T H, T H A T:

WHEREAS, Owner is the fee simple owner of the following described real estate, situated in Birmingham, Shelby County, Alabama, to wit:

LOT 1B, LOT 1D, LOT 1E, LOT 1F, LOT 2A AND LOT 2B according to that certain map entitled BROOK HIGHLAND PLAZA RESURVEY, as said map appears of record in the Office of the Judge of Probate of Shelby County, Alabama in Map Book 18, Page 99 (hereinafter referred to as the "BROOK HIGHLAND PLAZA OUTPARCEL PROPERTY").

WHEREAS, Owner desires to establish certain restrictions with respect to the use of the BROOK HIGHLAND PLAZA OUTPARCEL PROPERTY.

NOW THEREFORE, for and in consideration of ten and no/100 Dollars (\$10.00) and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Owner hereby submits the BROOK HIGHLAND PLAZA OUTPARCEL PROPERTY to the restrictions contained in this Declaration.

RESTRICTIVE COVENANTS

1. For the period of time hereinafter set forth, no portion of the BROOK HIGHLAND PLAZA OUTPARCEL PROPERTY shall be used as a steakhouse theme restaurant.
2. The provisions hereof shall expire on the earlier of (i) August 1, 2014 or (ii) one hundred eighty (180) days following the date upon which LOT 1C according to that certain map entitled BROOK HIGHLAND PLAZA RESURVEY, as said map appears of record in the Office of the Judge of Probate of Shelby County, Alabama in Map Book 18, Page 99 is no longer used as a steakhouse theme restaurant.

07/15/1994-22322
04:21 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
004 MCD 16.00

Land Title

Inst # 1994-22322

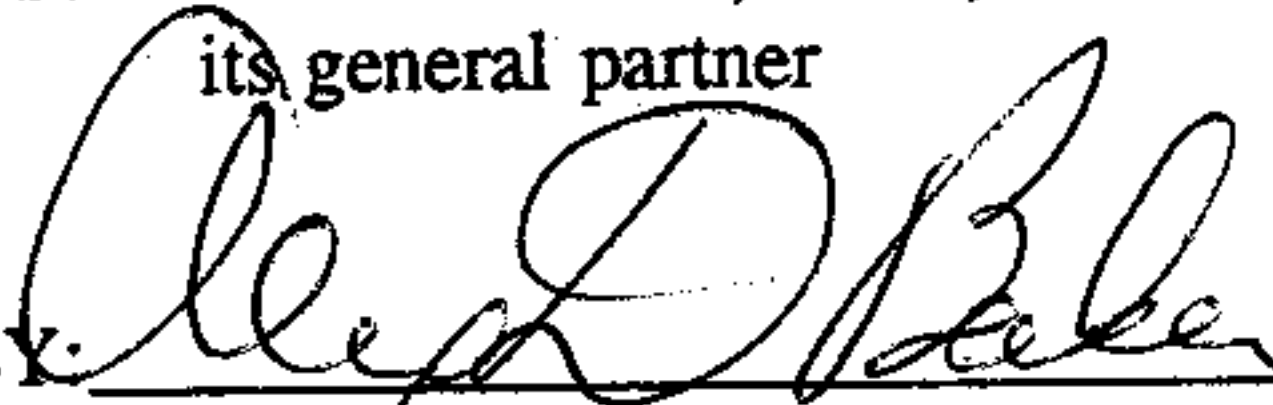
3. Any provision hereof or any section, sentence, clause, phrase or wording appearing herein which shall prove to be invalid, void or illegal for any reason shall in no way affect, impair or invalidate any other provision hereof, and the remaining provisions, paragraphs, sentences, clauses, phrases and words hereof shall nevertheless remain in full force and effect. If there is any restriction, covenant or agreement herein which is effective beyond the period permitted by law, it shall be effective only for such period or time as shall be lawful and shall then expire, all without affecting, impairing or invalidating any such as may be lawfully effective thereafter.
4. This Declaration may be amended only with the prior written consent of Owner, its successors or assigns.

IN WITNESS WHEREOF, an authorized representative of Alex Baker, Inc., an Alabama corporation, the general partner of BW280 LIMITED PARTNERSHIP, a Georgia limited partnership, the general partner of BROOK HIGHLAND LIMITED PARTNERSHIP, an Alabama limited partnership has executed this Declaration of Restrictive Covenants under seal as of the day and year written above.

BROOK HIGHLAND LIMITED PARTNERSHIP
an Alabama limited partnership

BY: BW280 LIMITED PARTNERSHIP, a
Georgia limited partnership,
its general partner

BY: ALEX BAKER, INC.,
its general partner

BY: 
Alex D. Baker, President

This instrument prepared by:

W. Ernest Moss, Esq.
1900 International Park Drive, Suite 303
Birmingham, Alabama 35243
(205) 969-1000

STATE OF ALABAMA)

COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said State and County, hereby certify that Alex D. Baker, whose name as President of Alex Baker, Inc., an Alabama corporation and a general partner in BW/280 Limited Partnership., a Georgia limited partnership, and a general partner in Brook Highland Limited Partnership, an Alabama limited partnership 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 above and foregoing instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation, acting in its capacity as general partner of said limited partnership acting in its capacity as the general partner of Brook Highland Limited Partnership on the day the same bears date.

Given under my hand and official seal of office this 11th day of July, 1994.

(Notary Seal)

Melissa Williams

Notary Public

My Commission Expires: 6-8-96

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JOINDER

SOUTHTRUST BANK OF ALABAMA, NATIONAL ASSOCIATION, a national banking association, the holder of a MORTGAGE AND SECURITY AGREEMENT recorded in Inst # 1993-32521, which MORTGAGE AND SECURITY AGREEMENT is a lien on the real property described hereinabove, does hereby consent to the establishment of certain restrictive covenants with respect to the use of the BROOK HIGHLAND PLAZA OUTPARCEL PROPERTY as hereinabove described, and does by these presents subordinate the lien of the MORTGAGE AND SECURITY AGREEMENT to the restrictive covenants as hereinabove established.

IN WITNESS WHEREOF, SOUTHTRUST BANK OF ALABAMA, NATIONAL ASSOCIATION has caused this Joinder to be executed by a duly authorized officer this 15th day of July, 1994.

SOUTHTRUST BANK OF ALABAMA,
NATIONAL ASSOCIATION,
a national banking association

By:

Its

Troy A. Gambriel
Vice President

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said State and County, hereby certify that Troy A. Gambriel as Vice President of SouthTrust Bank of Alabama, National Association, 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 above and foregoing instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said SouthTrust Bank of Alabama, National Association on the day the same bears date.

Given under my hand and official seal of office this 15th day of July, 1994.

Pamela A. West
Notary Public

My commission expires: 8-10-95

Inst # 1994-22322