

This instrument prepared by
and after recordation
should be returned to:

Peter E. Barber, Esq.
Wallace, Jordan, Ratliff, Byers & Brandt, L.L.C.
2000 SouthBridge Parkway, Suite 525
Birmingham, Alabama 35209

Inst # 1995-24268

09/01/1995-24268
02:59 PM CERTIFIED

SHELBY COUNTY JUDGE OF PROBATE
DOB MCD 26.00

STATE OF ALABAMA)

COUNTY OF SHELBY)

DECLARATION OF RESTRICTIVE COVENANT

This DECLARATION OF RESTRICTIVE COVENANT is made this 31st day of August, 1995 by **OXMOOR II, INC., a California corporation, and PEBBLE PARTNERS, an Alabama general partnership** (collectively, the "Declarant").

WITNESSETH:

WHEREAS, the Declarant is the owner of that certain real property described on Exhibit A hereto (the "Property"), which is attached hereto and made a part hereof;

WHEREAS, Pelham Hotel, L.L.C., an Alabama limited liability company, desires to purchase from the Declarant certain real property adjacent to the Property and such adjacent property is hereinafter referred to as "Parcel 1" and is more particularly described on Exhibit B hereto; and

WHEREAS, as a material inducement to Pelham Hotel, L.L.C. to purchase Parcel 1 from the Declarant, the Declarant has agreed to restrict the use of the Property as provided herein.

NOW THEREFORE, in consideration of the above premises, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Declarant hereby declares that the Property shall be subject to the following restrictions, covenants and conditions:

1. Use Restriction. Notwithstanding whether the zoning classification of the Property or any portion thereof permits otherwise, at no time shall the Property or any portion of the Property be used as a hotel, motel or similar lodging facility catering to the general public; provided, however, a "suites concept" or "full service" hotel, motel or similar lodging facility which has

a minimum regularly advertised daily rate of Seventy-Nine and No/100 Dollars (\$79.00), adjusted from August 31, 1995 by the Consumer Price Index (as hereinafter defined), shall be permitted on the Property. The term "Consumer Price Index" shall mean (i) the Consumer Price Index for All Urban Consumers U. S. City Average All Items (1982-84 = 100 reference base) as published by the Bureau of Labor Statistics of the United States Department of Labor and (ii) if such Index is not published, then such other index or standard as the Declarant and Pelham Hotel, L.L.C. may agree upon or if such agreement is not reached within 90 days after publication of the Index has ceased, such index or standard as shall be determined by arbitration in accordance with the rules of the American Arbitration Association.

2. Severability. If any provision of this Declaration, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Declaration, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

3. Restrictions to Run With Land. All restrictions, conditions and covenants herein shall run with the land and continue as such for twenty-five (25) years from the date hereof. They shall be extended from that time automatically unless the then owner of Parcel 1 shall covenant to alter, modify or eliminate any or all of these restrictions.

4. Enforcement, Waiver and Binding Effect of Restrictions. The provisions herein contained shall bind and inure to the benefit of, and be enforceable at law and in equity by Pelham Hotel, L.L.C. or Declarant, and their respective successors or assigns. Failure by Pelham Hotel, L.L.C. or Declarant, or their respective successors or assigns, or any grantee to enforce any of the restrictions, conditions and covenants contained herein shall in no event be deemed a waiver of the right to do so thereafter, and shall not subject Pelham Hotel, L.L.C. or Declarant to any liability for failure to enforce.

[The remainder of this page is intentionally blank.]

IN WITNESS WHEREOF, the Declarant has caused its duly authorized officer and general partner, respectively, to executed this Agreement on the day and year first set forth above.

Declarant:

OXMOOR II, INC.,
a California corporation,

By: Linda M. Stanley
Its: President

STATE OF California)
Sacramento COUNTY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Linda M. Stanley, whose name as President of Oxmoor II, Inc., 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 thereof, she, 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 29 day of August, 1995.

[SEAL]



Cathleen A. Gipe
Notary Public

My Commission Expires: June 18, 1999

PEBBLE PARTNERS, an Alabama general partnership,

By: Mike Graham

Its general partner

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Mike Graham, whose name as general partner of Pebble Partners, an Alabama general 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 thereof, he, as such general partner 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 30 day of August, 1995.

Martha J. Holland
Notary Public

[SEAL]

My Commission Expires: 2-7-99

EXHIBIT A: REAL PROPERTY DESCRIPTION

1. Parcel 1-A.

A parcel of land located in Section 31, Township 19 South, Range 2 West, Shelby County, Alabama, and being more particularly described as follows:

Commence at the Northeast Corner of the Southwest 1/4 of Section 31, Township 19 South, Range 2 West; thence run in a Westerly direction along the North line of said 1/4 section for a distance of 301.28 feet to the POINT OF BEGINNING; from the point of beginning thus obtained, thence turn a deflection angle to the left of 51°49'38" and run in a Southwesterly direction a distance of 524.87 feet to a point; thence turn an interior angle of 195°42'53" and run to the right in a Southwesterly direction a distance of 15.00 feet to a point; thence turn an interior angle of 77°49'02" and run to the left in a Southeasterly direction a distance of 195.60 feet to a point; thence turn an interior angle of 193°53'06" and run to the right in a Southeasterly direction a distance of 185.50 feet to a point; thence turn an interior angle of 183°06'00" and run to the right in a Southeasterly direction a distance of 201.40 feet to a point; thence turn an interior angle of 183°14'59" and run to the right in a Southeasterly direction a distance of 584.59 feet to a point; thence turn an interior angle of 86°27'28" and run to the left in a Northeasterly direction a distance of 406.08 feet to a point; thence turn an interior angle of 91°53'48" and run to the left in a Northwesterly direction a distance of 60.00 feet to a point; thence turn an interior angle of 268°06'12" and run to the right in a Northeasterly direction a distance of 60.04 feet to a point; thence turn an interior angle of 91°53'48" and run to the left in a Northwesterly direction a distance of 445.73 feet to a point; thence turn an interior angle of 268°06'12" and run to the right in a Northeasterly direction a distance of 517.09 feet to a point; thence turn an interior angle of 91°53'48" and run to the left in a Northwesterly direction a distance of 624.14 feet along the Southeast boundary line of Block 1 of Cahaba Valley Park North to a point; thence turn an interior angle of 119°45'59" and run to the left along said boundary line of Block 1 in a Westerly direction a distance of 571.50 feet to a point; thence turn an interior angle of 89°56'23" and run to the left in a Southerly direction a distance of 104.61 feet to the POINT OF BEGINNING. Said parcel contains 22.6873 acres, more or less.

2. Parcel 1-B.

A parcel of land located in Section 31, Township 19 South, Range 2 West, Shelby County, Alabama, and being more particularly described as follows:

Commence at the Northeast corner of the Southwest 1/4 of Section 31, Township 19 South, Range 2 West; thence run in a Westerly direction along the North line of said 1/4 section for a distance of 301.28 feet to the POINT OF BEGINNING; from the point of beginning thus obtained, thence turn a deflection angle to the right of 90°00'00" and run in a Northeasterly direction a distance of 104.61 feet to a point; thence turn an interior angle of 90°03'37" and run to the left along the Southerly boundary line of Block 1 of Cahaba Valley Park North in a

Westerly direction a distance of 548.79 feet to a point; thence turn an interior angle of 86°30'35" and run to the left in a Southerly direction a distance of 105.38 feet to a point on the North line of the Southwest 1/4 of said section; thence turn an interior angle of 93°25'48" and run to the left in an Easterly direction along said 1/4 line a distance of 542.49 feet to the POINT OF BEGINNING. Said parcel contains 1.3140 acres, more or less.

3. Parcel 1-C, Less and Except Portion thereof Described as Parcel 1 in the Declaration of Restrictive Covenant.

A parcel of land located in Section 31, Township 19 South, Range 2 West, Shelby County, Alabama, and being more particularly described as follows:

Commence at the Northeast corner of the Southwest 1/4 of Section 31, Township 19 South, Range 2 West; thence run in a Westerly direction along the north line of said 1/4 section for a distance of 301.28 feet to a point; thence turn a deflection angle to the left of 51°49'38" and run in a Southwesterly direction a distance of 524.87 feet to a point; thence turn an deflection angle to the right of 15°42'53" and run in a Southwesterly direction a distance of 15.00 feet to a point; thence turn a deflection angle to the left of 102°10'58" and run in a Southeasterly direction a distance of 195.60 feet to a point; thence turn a deflection angle to the right of 13°53'06" and run in a Southeasterly direction a distance of 185.50 feet to a point; thence turn a deflection angle to the right of 3°06'00" and run in a Southeasterly direction a distance of 201.40 feet to a point; thence turn a deflection angle to the right of 3°14'59" and run in a Southeasterly direction a distance of 584.59 feet to a point; thence turn a deflection angle to the left of 93°32'32" and run in a Northeasterly direction a distance of 466.12 feet to the POINT OF BEGINNING; from the point of beginning thus obtained, thence continue along last described course in a Northeasterly direction a distance of 517.09 feet to a point; thence turn an interior angle of 91°53'48" and run to the left in a Northwesterly direction along the Southeasterly boundary of Cahaba Valley Park North a distance of 505.73 feet to a point; thence turn an interior angle of 88°06'12" and run to the left in a Southwesterly direction a distance of 517.09 feet to a point; thence turn an interior angle of 91°53'48" and run to the left in a Southeasterly direction a distance of 505.73 feet to the POINT OF BEGINNING. Said parcel contains 6.00 acres, more or less.

LESS & EXCEPT a parcel of land located in Section 31, Township 19 South, Range 2 West, Shelby County, Alabama, and being more particularly described as follows:

Commence at the Northwest corner of the Southeast 1/4 of Section 31, Township 19 South, Range 2 West, Shelby County, Alabama, and run in an Easterly direction along the North line of said section a distance of 329.55 feet to a point, said point lying on the Southwesterly boundary line of Cahaba Valley Park North, as recorded in Map Book 13, pages 140a and 140b, in the Office of the Judge of Probate of Shelby County, Alabama; thence turn a deflection angle of 60°17'38" to the right and run in a Southeasterly direction along said boundary line of Cahaba Valley Park North a distance of 841.51 feet to a point, being the POINT OF BEGINNING of the herein described parcel; thence

continue along last described course in a Southeasterly direction a distance of 168.58 feet to a point; said point being an iron pin found at the Northeast corner of the real property described in Instrument No. 1994-08119 recorded in the Office of the Judge of Probate of Shelby County, Alabama; thence turn an interior angle of $91^{\circ}53'48''$ and run to the right in a Southwesterly direction on a line that is 250 feet Northwest of the Northwesterly right-of-way of Alabama Highway #119 a distance of 517.09 feet to a point; thence turn an interior angle of $88^{\circ}06'12''$ and run to the right in a Northwesterly direction a distance of 168.58 feet to a point; thence turn an interior angle of $91^{\circ}53'48''$ and run to the right in a Northeasterly direction a distance of 517.09 feet to the POINT OF BEGINNING; containing 2.0000 acres, more or less.

EXHIBIT B

PARCEL 1 DESCRIPTION

A parcel of land located in Section 31, Township 19 South, Range 2 West, Shelby County, Alabama, and being more particularly described as follows:

Commence at the Northwest corner of the Southeast $\frac{1}{4}$ of Section 31, Township 19 South, Range 2 West, Shelby County, Alabama, and run in an Easterly direction along the North line of said section a distance of 329.55 feet to a point, said point lying on the Southwesterly boundary line of Cahaba Valley Park North, as recorded in Map Book 13, pages 140a and 140b, in the Office of the Judge of Probate of Shelby County, Alabama; thence turn a deflection angle of $60^{\circ}17'38''$ to the right and run in a Southeasterly direction along said boundary line of Cahaba Valley Park North a distance of 841.51 feet to a point, being the POINT OF BEGINNING of the herein described parcel; thence continue along last described course in a Southeasterly direction a distance of 168.58 feet to a point; said point being an iron pin found at the Northeast corner of the real property described in Instrument No. 1994-08119 recorded in the Office of the Judge of Probate of Shelby County, Alabama; thence turn an interior angle of $91^{\circ}53'48''$ and run to the right in a Southwesterly direction on a line that is 250 feet, Northwest of the Northwesterly right-of-way of Alabama Highway #119 a distance of 517.09 feet to a point; thence turn an interior angle of $88^{\circ}06'12''$ and run to the right in a Northwesterly direction a distance of 168.58 feet to a point; thence turn an interior angle of $91^{\circ}53'48''$ and run to the right in a Northeasterly direction a distance of 517.09 feet to the POINT OF BEGINNING; containing 2.0000 acres, more or less.

Inst # 1995-24268

8

09/01/1995-24268
02:59 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
008 MCD 26.00