

REVISION 02-13-96

STATE OF ALABAMA )

SHELBY COUNTY )

EASEMENT AGREEMENT

This Easement Agreement made this 14 day of FEBRUARY, 1996 by and between JENKINS DEVELOPMENT COMPANY, L.L.C., AN ALABAMA LIMITED LIABILITY COMPANY ("Jenkins") and INTERSTATE RESTAURANT INVESTORS, AN ALABAMA GENERAL PARTNERSHIP and FRANK C. ELLIS, JR. (collectively Interstate Restaurant Investors and Frank C. Ellis, Jr. are referred to herein as "IRI").

Inst # 1996-08143

WHEREAS, Jenkins and IRI both own real property located in Shelby County, Alabama, said properties being contiguous along the line described on Exhibit "A" attached hereto (the "Boundary Line"); and

WHEREAS, the IRI real property (the "IRI Property") is located north of the Boundary Line and the Jenkins real property (the "Jenkins Property") is located south of the Boundary Line; and

WHEREAS, Jenkins and IRI desire to construct a two foot (2') wide retaining wall (the "Wall"), the centerline of such Wall being the Boundary Line with said Wall being approximately one foot (1') on either side of the Boundary Line; and

WHEREAS, the parties are desirous of setting forth their agreements with respect to the Wall and the Joint Easement.

NOW, THEREFORE, in consideration of the premises, the mutual covenants contained herein and other good and valuable considerations, the receipt and sufficiency of which are hereby

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acknowledged, the parties agree as follows:

1. Jenkins hereby grants, bargains, sells and conveys to IRI and IRI hereby grants, bargains, sells and conveys to Jenkins a non-exclusive perpetual easement, which easement shall run with the land, the width of such easement being one foot (1') north and one foot (1') south of the Boundary Line, the purpose of such easement being for the installation, location, operation and maintenance of the Wall. In addition, IRI hereby grants, bargains, sells and conveys to Jenkins a perpetual non-exclusive easement ten feet (10') north of the Boundary Line (the "Maintenance Easement") to provide for the future maintenance and repair of the Wall. It is expressly understood that the Maintenance Easement may now or in the future contain improvements or utilities and accordingly, prior to undertaking any maintenance of the Wall pursuant to paragraph 2 as hereinafter set out, Jenkins shall contact the then owner of the IRI Property in order to coordinate such maintenance so as not to damage the IRI Property or the improvements or utilities located thereon within the Maintenance Easement. Any damage to the IRI Property or the improvements or utilities located thereon occasioned by maintenance efforts of Jenkins shall be repaired at the sole expense of Jenkins.

2. The initial cost of the construction of the Wall shall be shared equally between Jenkins and IRI, provided, however, that in no event shall IRI's contribution to such initial cost of construction be more than Eight Thousand Two Hundred Fifty and No/100 Dollars (\$8,250.00). The Wall shall be constructed

according to plans and specifications approved by Jenkins and IRI. After the initial construction of the Wall, Jenkins, for so long as Jenkins Owns the Jenkins Property, and thereafter the owner or owners from time to time of the Jenkins Property, shall maintain and repair the Wall as the then owner of the Jenkins Property and the then owner of the IRI Property may reasonably deem necessary. The owner or owners from time to time of the Jenkins Property and the owner or owners from time to time of the IRI Property shall share equally the cost of repairing and maintaining the wall, provided, however, that, if repair of the Wall is necessitated by the fault of the then owner of either the Jenkins Property or the IRI Property, the cost of such repairs shall be borne by such owner.

3. The Wall shall not be removed or demolished without the express mutual written consent of all persons, firms or corporations having an interest in the real property that comprises the Wall or the Maintenance Easement.

4. Union State Bank, as Mortgagee of IRI, and Colonial Bank -Montgomery, as Mortgagee of Jenkins, have executed this Agreement and by doing so, expressly agree and acknowledge that the lien of any mortgage(s) held by Union State Bank or Colonial Bank encumbering the IRI Property and the Jenkins Property are expressly subject to and subordinate to the provisions of this Agreement.

5. The property concerned by this Agreement is not the homestead of Frank C. Ellis, Jr. or his spouse.


6. This Agreement shall be binding on the heirs, successors

and assigns of IRI and Jenkins.

7. TO HAVE AND TO HOLD, unto IRI and Jenkins, their respective heirs, successors and assigns forever.

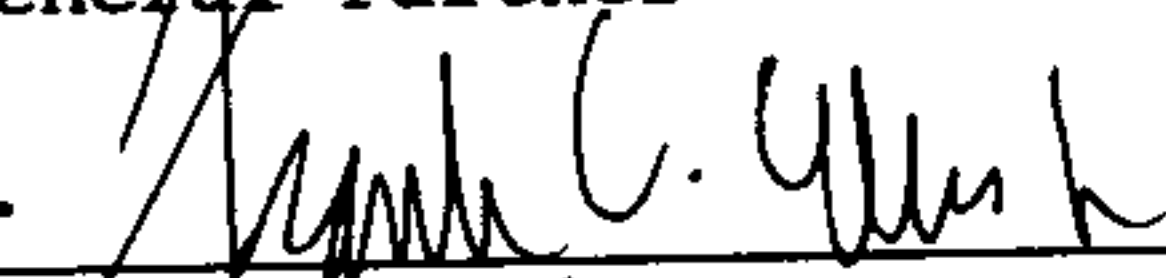
DONE the date and year first above written.

INTERSTATE RESTAURANT INVESTORS, AN  
ALABAMA GENERAL PARTNERSHIP

By:   
John G. Benner  
Its: General Partner

By:   
John McGeever  
Its: General Partner



By:   
William R. Robertson  
Its: General Partner

  
Frank C. Ellis, Jr.


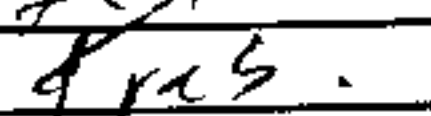
JENKINS DEVELOPMENT COMPANY, L.L.C.,  
AN ALABAMA LIMITED LIABILITY COMPANY

By:  2/14/96 MGR.  
Its: Member and Manager

COLONIAL BANK - MONTGOMERY

By:   
Its: 

UNION STATE BANK

By:   
Its: 



STATE OF ALABAMA )

COUNTY OF JEFFERSON )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that JOHN G. BENNER, JOHN MCGEEVER and WILLIAM R. ROBERTSON, whose names as General Partners of INTERSTATE RESTAURANT INVESTORS, AN ALABAMA GENERAL PARTNERSHIP, a partnership, are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of said instrument, they, as such General Partners and with full authority, executed the same voluntarily for and as the act of said partnership on the day the same bears date.

Given under my hand and seal this 28 day of February, 1996.

  
Notary Public  
My Commission Expires: 3-1-98

STATE OF ALABAMA )

COUNTY OF SHELBY )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that FRANK C. ELLIS, JR., whose name 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 foregoing instrument he executed the same voluntarily on the day the same bears date.

Given under my hand and seal this 28 day of February, 1996.

  
Notary Public  
My Commission Expires: 3-1-98

STATE OF ALABAMA )  
COUNTY OF Montgomery )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that J.M. Jenkins, whose name as Member and Manager of JENKINS DEVELOPMENT COMPANY, L.L.C., AN ALABAMA LIMITED LIABILITY COMPANY, 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 said instrument, he/she, as such Member and Manager and with full authority, executed the same voluntarily for and as the act of said limited liability company on the day the same bears date.

Given under my hand and seal this 14 day of Feb, 1996.

Linda K. Fast  
Notary Public  
My Commission Expires: Jan 10, 2000

STATE OF ALABAMA )  
COUNTY OF MONTGOMERY )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that John P. Roman, whose name as Executive Vice President of COLONIAL BANK - MONTGOMERY, a state banking institution, 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 said instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said banking institution on the day the same bears date.

Given under my hand and seal this 14th day of February, 1996.

Debbie R. Vane  
Notary Public  
My Commission Expires: 6/24/98

STATE OF ALABAMA )

COUNTY OF JEFFERSON )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that REX V. ALEXANDER, whose name as PRESIDENT of UNION STATE BANK, BIRMINGHAM, ALABAMA, a state banking institution, 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 said instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said banking institution on the day the same bears date.

Given under my hand and seal this 29 day of FEBRUARY, 1996.

  
\_\_\_\_\_  
Notary Public  
My Commission Expires: 3-1-98

This Instrument was Prepared by:  
James F. Burford, III  
Attorney at Law  
100 Vestavia Office Park  
Suite 200-A  
Birmingham, Alabama 35216  
Telephone: (205) 823-5968  
Facsimile: (205) 823-5336

**Exhibit "A"**

**LEGAL DESCRIPTION**

The following described line is situated in the Southwest Quarter of Section 31, Township 19 South, Range 2 West, Shelby County, Alabama, and being more particularly described as follows:

Commence at the Southeast corner of the Southwest Quarter of Section 31, Township 19 South, Range 2 West; thence run north along the Quarter line 506.79 feet; thence left  $121^{\circ}25'36''$  run in a southwesterly direction 1325.96 feet; thence right  $129^{\circ}39'13''$  run in a northerly direction 359.51 feet, to the point of beginning, thence left  $90^{\circ}00'00''$  run in a westerly direction 295.00 feet to the end of the line where the retaining wall is built.

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