

This instrument prepared by George M. Taylor, III, Attorney-at-Law,
Burr & Forman, 3100 SouthTrust Tower, 420 North 20th Street,
Birmingham, Alabama 35203

**DEED, DECLARATION OF EASEMENTS AND
RESTRICTIONS, AND MEMORANDUM OF
RELATED AGREEMENTS**

Inst # 1996-13623

STATE OF ALABAMA)
)
SHELBY COUNTY) **KNOW ALL MEN BY THESE PRESENTS,**

That in consideration of One Hundred and no/100 Dollars (\$100.00) to the undersigned grantor, Oak Mountain Amphitheater, Inc., an Alabama corporation, in hand paid by The City of Pelham, Alabama, a municipal corporation, (the "Grantee"), the receipt of which is hereby acknowledged, the said Oak Mountain Amphitheater, Inc., an Alabama corporation (the "Grantor"), does by these presents, grant, bargain, sell and convey unto the Grantee the following:

(1) The real estate situated in Shelby County, State of Alabama, described on Exhibit A attached hereto which is made a part hereof by this reference, (the "Premises").

(2) A nonexclusive easement for purposes of obtaining utility access and for vehicular and pedestrian ingress and egress from the Premises along the area described on Exhibit "B" hereto (the "Ingress and Egress Easement").

(3) A nonexclusive easement for purposes of parking on that real estate described on Exhibit "C" hereto (the "Parking Easement").

(4) A temporary easement across the area described on Exhibit "D" hereto for the purpose of locating and operating equipment and materials for the construction of an Ice Skating Complex on the Premises (the "Construction Easement"), said easement to expire as set forth below.

The Premises, the Ingress and Egress Easement, the Parking Easement, and the Construction Easement, are herein collectively referred to as the "Conveyed Interests". All of the foregoing are conveyed subject to the following: (i) current year's ad valorem taxes; (ii) easements and restrictions of record; (iii) the Option to Purchase reserved by Grantor herein; and (iv) oil, gas, and mineral rights not owned by Grantor are not conveyed

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hereby. All of said excluded matters are herein referred to as the "Permitted Encumbrances".

TO HAVE AND TO HOLD to the Grantee, its successors and assigns forever.

PROVIDED, HOWEVER, that Grantor does hereby reserve from the interests hereby conveyed, and Grantee does hereby grant to Grantor, an Option to Purchase the Conveyed Interests as more particularly set forth below and that this Deed is executed and delivered pursuant to the Agreement between Grantor and Grantee hereinafter referenced and is subject to the additional agreements of the parties set forth herein.

AND, in addition to the above and foregoing conveyances, the parties to this Deed hereby further represent, warrant, covenant and agree as follows:

1. Additional Obligations. This Deed is delivered pursuant to that certain Agreement between Grantor and Grantee dated March 15, 1996, (the "Agreement") which Agreement provides for the conveyance of the Conveyed Interests to the Grantee and sets forth certain additional covenants of Grantor and Grantee with respect to the Conveyed Interests and the adjacent properties of Grantor. Said Agreement shall be deemed incorporated herein the same as if stated herein by this reference and said Agreement shall survive delivery of this Deed. Included in said obligations set forth in the Agreement are the obligations of Grantee to construct paved parking lots on adjacent land of Grantor and the obligation of Grantee to install parking lot lighting on Grantor's adjacent properties and to maintain the same in accordance with the provisions of the Agreement. Grantor and Grantee agree that once said parking areas are paved by Grantee, the maintenance of said parking areas shall be shared jointly by Grantor and Grantee as provided in the Agreement. Grantor shall be entitled to perform any such necessary maintenance and to charge Grantee therefor as provided in the Agreement. Grantor and Grantee further acknowledge certain indemnification obligations of each to the other as more particularly set forth in the Agreement.

2. Option to Purchase. Grantor does hereby reserve from the Conveyed Interests and Grantee does hereby grant to Grantor, an Option to Purchase the Conveyed Interests upon the occurrence of any "Option Event" for the lesser of "Depreciated Construction Costs" or "Appraised Value" on the terms and conditions set forth below:

(a) For purposes of this Deed, "Depreciated Construction Cost" shall be determined as follows: Grantee shall maintain books and records on which the costs of construction of the Ice Skating Complex are maintained and depreciated in accordance with generally

accepted accounting principles, consistently applied, and the book value of the Ice Skating Complex as reflected on said books from time to time shall constitute the "Depreciated Construction Cost".

(b) For purposes of this Agreement, "Appraised Value" shall be determined as follows: Grantor and Grantee shall select a real estate appraiser who shall be a Member of the Appraiser's Institute, which appraiser shall perform a market value appraisal of the improvements located on the Premises, but only such improvements as comply with the restrictive covenants hereinafter set forth and excluding the value of the Conveyed Interests. The value so determined shall be the "Appraised Value". In the event Grantor and Grantee are unable to agree on an appraiser, each shall select an appraiser and each of the two appraisers shall select a third appraiser and each shall perform a market value appraisal of the Ice Skating Complex, excluding the value of the Conveyed Interests. Of the three appraised valuations so determined, that valuation that is the most different in amount from the average of the other two appraisals, whether higher or lower, shall be disregarded and the "Appraised Value" shall be the average of the remaining two appraisals. If at the time of appraisal no improvements have been constructed by the Grantee, the Appraised Value shall be \$10.00. The cost of the appraisals shall be shared equally by the parties.

(c) The option may be exercised by Grantor at any time after the occurrence of an Option Event. For purposes of this paragraph, "Option Event" shall mean (i) the failure of the City to construct the Ice Skating Complex according to the Plans (as hereinafter defined) on or before the date twenty-four months after the date hereof, except where failure is caused by conditions beyond the control of the City which conditions the City is using due diligence to remedy, or (ii) after construction is completed, the failure of the City to operate the Ice Skating Complex for the permitted uses for a period in excess of six (6) months or (iii) the transfer, sale or conveyance by the City of any interest in the Conveyed Interests. The City shall have the obligation to promptly notify Oak Mountain of the occurrence of any Option Event. An Option Event shall not be deemed to have occurred until such time as Grantor notifies Grantee that it has become aware of the occurrence of such an event or until such time as Grantee has notified Grantor of the occurrence of such event.

(d) If the option is exercised by the Purchaser, the closing of the purchase and sale shall take place on a date and at a place designated by Grantor in the notice given to Seller of the exercise of the option. Closing shall be subject to Grantor's obtaining an environmental assessment and site inspection report acceptable to it and an updated title report, and shall also be subject to such other inspection and review as Grantor shall deem appropriate. Notwithstanding notification by Grantor to Grantee of

the exercise by Grantor of the option, Grantor may refuse to close if any such reports and inspections shall be unacceptable to Grantor in the exercise of its sole discretion. At the closing, Grantee will deliver to Grantor a statutory warranty deed to the Conveyed Interests free and clear of all liens and encumbrances except for Permitted Encumbrances that existed on the date of this Deed and any other utility or similar easements placed thereon by Grantee with Grantor's consent after the date hereof. Grantee shall grant to Grantor immediate possession of the Conveyed Interests upon the closing except as provided herein.

3. Restrictions on Use. The Conveyed Interests are conveyed hereby on the condition that, and subject to the restriction that the Premises shall be used only for the purpose of constructing and operating an ice skating arena and related entertainment complex which may include food and beverage service, meeting facilities, concessions sales, and sales of products relating to ice skating but only for so long as the principal purpose of the facility is to furnish an ice skating rink for general recreational purposes (collectively, the "Ice Skating Complex"), and any failure by the City to so operate it shall constitute an Option Event and shall give rise to the other remedies set forth herein and in the Agreement. Grantee further agrees that the Conveyed Interests will at all times be operated in accordance with all applicable federal, state and local laws and ordinances and that Grantee will maintain all improvements located on the Conveyed Interests in good condition and in accordance with all such laws and regulations.

4. Parking Easement and Ingress and Egress Easement. The Parking Easement and the Ingress and Egress Easements are conveyed to the Grantee subject to the following:

(a) No parking shall be available for use by the Grantee, except such parking as may otherwise be available on the Premises itself, during the nights or afternoons in which major concert events occur at the Grantor's adjacent entertainment facility. Grantor shall retain the right to designate no more than forty (40) nights a year in which major concert events shall occur and during said times, Grantor shall have the exclusive right to occupy all parking areas contained in the Premises and in the Parking Easement area less and except forty (40) spaces reserved for the exclusive use of Grantee. Grantor shall give Grantee at least sixty (60) days notice of each major concert event.

(b) The use of the Parking Easement and the Ingress and Egress Easement shall be subject to the right of Grantor to promulgate such rules and regulations applicable to the Parking Easement and the Ingress and Egress Easement as might be reasonably imposed to promote the health, safety, welfare and security thereof, the improvements located thereon and Grantee's and Grantor's respective patrons, customers, guests, employees and

invitees. Grantor reserves the right to remove, exclude and restrain any person from the use, occupancy or enjoyment of the Parking Easement or the Ingress and Egress Easement for failure to observe the reasonable rules and regulations established as provided herein.

5. Construction of Improvements. The construction of the Ice Skating Complex (the "Construction Work" will be performed in conformity with the plans and specifications prepared by Milberger & Milberger Architects, Inc. (the "Plans") and heretofore approved by Grantor, which are incorporated by reference herein. The construction materials to be used in connection with the Construction Work are comprised of the items described in the Plans. Grantee will obtain all permits and consents that may be required to be obtained in connection with the Construction Work. Grantee covenants and agrees that the Construction Work will be performed and completed in compliance with all applicable laws, statutes, ordinances, and governmental rules, regulations and requirements.

6. Construction Easement. The Construction Easement is conveyed to Grantee subject to the following:

(a) The Construction Easement shall extend and continue only during the Construction Period. For purposes of this Deed, "Construction Period" shall mean the period beginning on the date of this deed and ending on the date two years after the date of this deed. The Construction Easement shall continue during the Construction Period and thereafter shall lapse. Upon expiration of the Construction Easement, upon request of Grantor, the Grantee shall execute, deliver and record a satisfaction and termination of the Construction Easement.

(b) Grantee covenants and agrees that as a condition to the granting of the Construction Easement it will conduct its construction activities on the Premises and on the Construction Easement area in such manner as to not unreasonably interfere with the operation of Grantor's business on adjacent property and in such manner as to minimize any disruption or inconvenience to Grantor. Grantee further covenants and agrees that while the construction work is being performed, Grantee, will at Grantee's sole expense, remove all debris and garbage located on the Construction Easement on a weekly basis. Grantee will further comply with all laws, rules and regulations, federal, state and local, in its construction activities.

(c) Grantee covenants and agrees that after the construction work has been completed, Grantee, will, at Grantee's sole cost and expense, promptly remove the construction equipment and materials from the Construction Easement area and will repair, replace and restore the Construction Easement area to the condition the same was in on the date of this deed, or in the case of

property to be paved pursuant to the Agreement, to the condition existing on the completion date of said paving.

(d) Grantee will not permit any claim, lien or other encumbrance arising from the construction work or Grantee's use of the Construction Easement to accrue against or attach to the Construction Easement or the interests of Grantor in its adjacent property.

7. Miscellaneous.

(a) Each of the easements and rights granted to Grantee by this Deed are appurtenant to the Premises and may not be transferred, assigned or encumbered except as an appurtenance to the Premises. Each of the covenants, restrictions, and agreements set forth herein shall constitute a covenant running with the land and bind every owner now having or hereafter acquiring an interest in any such parcel, and each will inure to the benefit of Grantor and Grantee and each of their successors, assigns, and mortgagees. Grantor and Grantee each agree that on conveyance of all or any part of the Conveyed Interests, the grantee therein, by accepting such conveyance, will thereby become a party to and be bound by this Deed.

(b) Nothing contained in this Deed will be deemed to constitute a gift, grant or dedication of any portion of the Conveyed Interests to the general public or for any public purpose whatsoever, it being the intention of Grantor and Grantee that this Deed will be strictly limited to the private use of Grantor and Grantee and their respective permittees. This Deed is intended to benefit Grantor and Grantee and their respective successors, assigns, and mortgagees and is not intended to give rights to any third party beneficiaries.

(c) In any action at law or in equity by Grantor or Grantee to enforce any provision of this Deed or the Agreement, the prevailing party in such action shall be entitled to recover its reasonable costs and expenses, including without limitation, court cost and attorneys' fees, awarded by a court of competent jurisdiction. The parties agree that the rights conferred upon the parties pursuant to this Deed are unique and that damages are an inadequate remedy for the breach hereof. Accordingly, each party agrees that in addition to the other remedies it may have at law or in equity as a result of breach by the other party, the non-breaching party shall be entitled to both preliminary and permanent injunction against the breaching party to prevent a breach or contemplated breach of the covenants and provisions of this Deed or of the Agreement, or of any other deed, assignment, easement, covenant or other instrument executed pursuant to the terms of this Deed or the Agreement.

(d) In the event any party fails to perform any of the provision of this Deed or of the Agreement or of any other deed, assignment, easement, covenant or other instrument executed pursuant to the terms of this Deed or the Agreement, the other party shall have the right, after first providing the other party at least thirty (30) days prior notice, (except that no notice shall be required in the event of an emergency), without being obligated to do so, to enter upon the property and improvements of such defaulting party, if necessary and to perform the obligations of the defaulting party hereunder. If a party elects to perform the action to be have been performed by the other, on completion of such action, or from time to time, if the action is of a continuing nature, an itemized statement of the cost thereof payable by the defaulting party will be submitted to the defaulting party and the amount thereof will be immediately due and payable by the defaulting party. All amounts owed by one party to the other under the terms of this Deed or the Agreement shall bear interest at the rate of twelve percent (12%) per annum from the date such amounts are due and payable until paid.

(e) Each party agrees to execute and deliver from time to time within ten (10) days after written request by any other party, a certificate to the effect, if true and to the best knowledge of such party, that: it is in default under this Deed; all conditions under this Deed to be performed by the party requesting such certificate have been satisfied; no defense or offset currently exists or is claimed against the other or against enforcement of this Deed; and such other certifications as might reasonably be required by any party.

(f) If any provision of this Agreement is, to any extent, declared by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement (or the application of such provision to persons or circumstances other than those in respect of which the determination of invalidity or unenforceability was made) will not be affected thereby and each provision of this Agreement will be valid and enforceable to the fullest extent permitted by law.

(g) If there is any dispute between the language contained in this Deed and that contained in the Agreement, the language in the Agreement shall control.

IN WITNESS WHEREOF, the said Grantor and Grantee have each caused this Deed to be executed by their duly authorized officers as of this 26th day of April, 1996.

OAK MOUNTAIN AMPHITHEATER, INC.

By: [Signature]
Its: President

STATE OF FLORIDA)
COUNTY OF Okaloosa)

The foregoing instrument was acknowledged before me this 28th day of March, 1996, by Robert A. Bonezzi, President of Oak Mountain Amphitheater, Inc., a corporation, on behalf of said corporation. Such person did not take an oath and:

(notary must check applicable box)

- ☒ is/are personally known to me.
- ☐ produced a current Florida driver's license as identification.
- ☐ produced _____ as identification.

{Notary Seal must
be affixed}

[Signature]
Signature of Notary



"OFFICIAL SEAL"
Jill R. Graham
My Commission Expires 8/21/98
Commission #CC 401786

Name of Notary (Typed, Printed or Stamped)
Commission Number (if not legible on seal): _____
Commission Expires (if not legible on seal): _____

THE CITY OF PELHAM

By:

Its:

Bobby Hayes
MAYOR

STATE OF ALABAMA)

SHELBY COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that BOBBY HAYES, whose name as MAYOR of The City of Pelham (Alabama), a municipal 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 MAYOR 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 12 day of April, 1996.

[NOTARIAL SEAL]

Frank Ellis
Notary Public

My commission expires: 9-9-98

EXHIBIT "A"

(The Premises)

A parcel of land situated in the NE 1/4 of the NW 1/4 of Section 6, Township 20 South, Range 2 West in Shelby County, Alabama and being more particularly described as follows:

Commence at the NE Corner of the NE 1/4 of the NW 1/4 of Section 6, Township 20 South, Range 2 West; thence S 00deg-03'11" E and in a southerly direction along the east line of said 1/4-1/4 section a distance of 191.85' to a point on the northwesterly right-of-way line of Oak Mountain Park Road (200' R.O.W.); thence S 53deg-03'-12" W along said right-of-way line a distance of 328.08' to the POINT OF BEGINNING; thence continue along the last described course a distance of 594.96'; thence N 36deg-56'-48" W a distance of 368.85'; thence N 53deg-14'58" E a distance of 553.92'; thence S 36deg-45'-02" E a distance of 8.00'; thence N 53deg-14'-58" E a distance of 42.29'; thence S 36deg-45'-02" E a distance of 346.82' to the Point of Beginning.

EXHIBIT "B"

(Ingress and Egress Easement)

n Ingress and Egress Easement situated in the N.E. 1/4 of the N.W. 1/4 of Section 6, Township 20 South, Range 2 West in Shelby County, Alabama and being more particularly described as follows:

Commence at the NE Corner of the N.E. 1/4 of the N.W. 1/4 of Section 6, Township 20 South, Range 2 West; thence S 00deg-03'11" E and in a southerly direction along the east line of said 1/4-1/4 section a distance of 191.85' to a point on the northwesterly right-of-way line of Oak Mountain Park Road (200' R.O.W.); thence S 53deg-03'-12" W along said right-of-way line a distance of 328.08' to the Point of Beginning; thence continue along the last described course and along said right-of-way a distance of 594.95'; thence N 36deg-56'46" W and leaving said right-of-way run a distance of 498.86'; thence N 53deg-14'58" E and run a distance of 169.99'; thence S 36deg-45'02" E and run a distance of 40.42'; thence N 53deg-14'58" E and run a distance of 426.29'; thence S 36deg-45'02" E and run a distance of 346.82' to the Point of Beginning.

EXHIBIT "C"
(Parking Easement)

A parcel of land situated in the N.E. 1/4 of the N.W. 1/4 and the N.W. 1/4 of the N.E. 1/4 of Section 6, Township 20 South, Range 2 West, and the S.E. 1/4 of the S.W. 1/4 and the S.W. 1/4 of the S.E. 1/4 of Section 31, Township 19 South, Range 2 West, more particularly described as follows:

Commence at the N.E. corner of the N.E. 1/4 of the N.W. 1/4 of Section 6, Township 20 South, Range 2 West; thence S0deg-03'11"E along the east line of said 1/4-1/4 section for a distance of 191.85' to a point on the northwesterly right-of-way line of Oak Mountain Park Road (200' R.O.W.) and the POINT OF BEGINNING; thence S53deg-03'12"W along said right-of-way for a distance of 923.03'; thence N36deg-56'46"W and leaving said right-of-way for a distance of 474.74'; thence S12deg-43'06"W for a distance of 69.21'; thence S43deg-31'17"W for a distance of 103.77'; thence S48deg-43'47"W for a distance of 72.91'; thence S8deg-07'47"W for a distance of 108.21'; thence S38deg-33'17"W for a distance of 56.43'; thence S61deg-18'47"W for a distance of 83.02'; thence N53deg-54'13"W for a distance of 38.58'; thence N21deg-13'13"W for a distance of 150.23'; thence N37deg-30'13"W for a distance of 187.54'; thence N7deg-57'51"E for a distance of 239.18'; thence S82deg-02'09"E for a distance of 251.74'; thence N58deg-07'16"E for a distance of 1416.19'; thence N60deg-02'06"E for a distance of 89.68'; thence N29deg-43'09"W for a distance of 273.50'; thence N60deg-44'04"E for a distance of 240.00'; thence S21deg-41'32"E for a distance of 410.32' to a point on the center line of Bishop Creek; thence N67deg-40'51"E along said center line for a distance of 129.10'; thence N75deg-45'49"E along said center line for a distance of 124.44'; thence N76deg-54'49"E along said center line for a distance of 49.66'; thence N62deg-39'49"E along said center line for a distance of 139.06'; thence N39deg-35'49"E along said center line for a distance of 261.01'; thence N59deg-28'49"E along said center line for a distance of 195.15'; thence N59deg-28'49"E along said center line for a distance of 124.97'; thence S30deg-31'11"E and leaving said center line for a distance of 863.83' to a point on the northwesterly right-of-way line of Oak Mountain Park Road (R.O.W. varies); thence southwesterly along said right-of-way for a distance of 1785', more or less; thence N0deg-03'11"W along said right-of-way for a distance of 82.21' to the POINT OF BEGINNING.

PROVIDED, HOWEVER, that said easement shall be limited to those 1,000 parking spaces next adjacent to the Premises

EXHIBIT "D"

(A Temporary Construction Easement)

An easement situated in the NE 1/4 of the NW 1/4 of Section 6, Township 20 South, Range 2 West in Shelby County, Alabama and being more particularly described as follows:

Commence at the NE Corner of the NE 1/4 of the NW 1/4 of Section 6, Township 20 South, Range 2 West; thence S 00deg-03'11" E and in a southerly direction along the east line of said 1/4-1/4 section a distance of 191.85' to a point on the northwesterly right-of-way line of Oak Mountain Park Road (200' R.O.W.); thence S 53deg-03'-12" W along said right-of-way line a distance of 227.45' to the POINT OF BEGINNING; thence continue along the last described course and along said right-of-way a distance of 695.58'; thence N 36deg-56'46" W and run a distance of 498.86'; thence N 53deg-14'58" E and run a distance of 554.37'; thence S 36deg-45'02" E and run a distance of 138.00'; thence N 53deg-14'58" E and run a distance of 103.00'; thence S 36deg-45'02" E and run a distance of 40.00'; thence N 53deg-14'58" E and run a distance of 22.00'; thence S 36deg-45'02" E and run a distance of 289.57'; thence S 68deg-33'01" E and run a distance of 34.01' to the Point of Beginning.

CONSENT

Inst # 1996-13623

The undersigned, First Alabama Bank, as the holder of that certain mortgage given by Destin Development Co., Inc. to Cobb Investment Co., Inc. dated May 15, 1990, and recorded in the Office of the Judge of Probate of Shelby County, Alabama, in Real 304, page 634, and transferred to the undersigned by instrument recorded in said Probate Office in Real 386, page 458, as modified by Mortgage Modification Agreement recorded in said Probate Office as Instrument #1993-20034 (the "Mortgage"), which encumbers the property described as Parcel C (Parking Easement) in the attached Deed, Declaration of Easements and Restrictions, and Memorandum of Related Agreements (the "Deed"), does hereby join in the execution of and consent to the execution of the Deed by Oak Mountain Amphitheater, Inc, and does hereby further agree that any foreclosure of the Mortgage, or conveyance in lieu thereof, shall not operate to terminate the easements established in the Deed.

FIRST ALABAMA BANK

By: William E. Beckham
Its: Senior Vice President

STATE OF ALABAMA)
 :
JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that William E. Beckham, whose name as Senior Vice President of First Alabama Bank, an Alabama banking 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 24 day of April, 1996.

Shirley J. Esco
Notary Public

[NOTARIAL SEAL]

MY COMMISSION EXPIRES OCTOBER 26, 1999
My commission expires: _____

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