

STATE OF ALABAMA)
SHELBY COUNTY)

DECLARATION OF EASEMENT

THIS DECLARATION OF EASEMENT (this "Declaration") is executed as of March 28, 1997, by **TERRY L. COLAFRANCESCO**, (the "Declarant").

Recitals

A. The Declarant is the owner of property located in Shelby County, Alabama which is more particularly described on Exhibit A attached hereto (the "Servient Parcel").

B. Caritas of Birmingham, Inc. ("Caritas") is the owner of property located in Shelby County, Alabama which is more particularly described on Exhibit B attached hereto (the "Dominant Parcel"). The Servient Parcel and the Dominant Parcel are hereinafter sometimes together referred to as the "Parcels".

C. Caritas has requested, and the Declarant wishes to provide, for a means of ingress and egress to the Dominant Parcel across the Servient Parcel, as hereinafter provided.

D. The Declarant desires to declare, establish, grant and provide for the benefit of (i) Caritas and any subsequent owner(s) or ground lessee(s) of all, or any portion of all, or any of the Dominant Parcel, and their respective heirs, successors and assigns (hereinafter collectively called the "Owners"), (ii) the Owners' agents, customers, invitees, licensees, employees, servants, contractors, and tenants (and tenants' customers, invitees, licensees, employees, servants, and contractors) (all of the foregoing herein collectively called the "Permittees"), and (iii) the holder or holders of any mortgage or deed to secure debt now or hereafter constituting a lien against all or any of the Parcels, and the heirs, successors and assigns of any such holder (herein collectively called the "Mortgagees") certain restrictions, rights, obligations, easements and licenses to run with the title to the Servient Parcel and the Dominant Parcel as hereinafter set forth.

Declaration

NOW, THEREFORE, for the purposes set forth in the foregoing recitals, and for the benefit of the Declarant, the Owners, the Permittees and the Mortgagees, the Declarant does hereby declare and provide as follows:

1. **Ingress/Egress Easement**. The Declarant hereby establishes and creates for the benefit of the Dominant Parcel and for the benefit of the Owners, Permittees, and Mortgagees, having from time to time an interest in the Dominant Parcel; and does hereby give, grant, bargain, sell and convey to each such Owner, Permittee, and Mortgagee a non-exclusive, non-perpetual easement, right, license and privilege appurtenant to the Dominant Parcel for the

306623.01\CLARKT\3-13

Inst # 1997-13717

05/02/1997-13717
01:44 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
006 SMA 22.00

benefit of the Dominant Parcel for the right of passage and use, both pedestrian and automotive, over, across and upon the Servient Parcel, for the purpose of ingress to and egress from the Dominant Parcel (and Declarant shall, at all times, provide access for pedestrian and motor vehicle ingress and egress to and from the Dominant Parcel to a publicly dedicated right of way).

2. **Upkeep and Maintenance of Servient Parcel.** The Declarant shall at all times have a duty to maintain the Servient Parcel in a manner that will enable the Owners, Permittees, and Mortgagees full use of the rights and easements created hereby, which duty shall include, without limitation, an obligation to (i) remove all debris, (ii) clean and maintain the Servient Parcel and (iii) perform all other acts necessary to enable the Owners and Mortgagees to have a safe and unobstructed passage across the Servient Parcel. If Declarant fails to perform its obligations to maintain and repair as aforesaid after reasonable notice from any of the Owners of the condition requiring maintenance and repair, such Owner(s) may perform such maintenance and repair, and the Owner(s) and/or the Permittees are granted a temporary non-exclusive easement on, over and across the Servient Parcel from time to time as may be reasonably necessary to effectuate such maintenance and repair.

3. **Modification.** The terms, covenants, conditions and provisions of this Declaration may be extended, abrogated, modified, rescinded or amended in whole, or in part, only with the prior written consent of the Declarant, the Mortgagees and the Owners; but subject to such consent, the Declarant expressly reserves the right to extend, abrogate, modify, rescind or amend the grants herein by an instrument in writing duly executed by the appropriate parties in interest and recorded in the Office of the Judge of Probate of Shelby County, Alabama.

4. **Easements Appurtenant, Term, etc.** The easement, rights, privileges and benefits created or granted under this Declaration and each provision hereof shall be enforceable by the Declarant, the Mortgagees and the Owners by injunction, or by specific performance, and shall be deemed an easement appurtenant, and a covenant running, with the title to the Servient Parcel and the Dominant Parcel. This Declaration shall be binding upon, and inure to the benefit of, the respective heirs, legal representatives, successors and assigns of the Declarant, the Mortgagees and the Owners as herein provided.

5. **No Public Dedication.** This Declaration is not intended, and shall not be construed, to dedicate any easements to the general public or to grant to the general public any rights whatsoever.

6. **Severability.** If any term, covenant or restriction established by this Declaration shall be invalid or unenforceable, the remainder of this Declaration shall not be effected thereby, and each term, covenant and restriction shall be valid and enforceable to the fullest extent permitted by law.

7. **Termination of Easement upon Repayment of Loan.** The easement, rights, privileges and benefits created or granted under this Declaration and each provision hereof shall terminate upon the occurrence of each of the following: (i) the repayment in full of all

indebtedness (including all principal, interest, fees, charges and costs (including attorneys' fees and disbursements)) evidenced by that certain Master - Note Commercial Loans dated March 28, 1997 executed by the Declarant in favor of National Bank of Commerce of Birmingham in the original principal amount of \$230,000.00 including all renewals, extensions, modifications and amendments thereof (collectively, the "Note"); and (ii) the execution and recordation by NBC of an acknowledgement that such Note has been repaid in full in accordance with the terms and conditions of the Note. Notwithstanding the foregoing, if (i) an event of default occurs under the Note and such event of default is not cured within any applicable grace periods set forth therein; or (ii) NBC forecloses on its lien on either or both of the Parcels; or (iii) Caritas grants a deed-in-lieu of foreclosure to NBC with respect to either of the Parcels, then, in such event, the easement, rights, privileges and benefits created or granted under this Declaration and each provision hereof shall become permanent in nature and cannot be terminated except in accordance with Section 3 hereof.

IN WITNESS WHEREOF, the Declarant has executed this Declaration on the day and year first above written.



Terry L. Colafrancesco

STATE OF ALABAMA)
COUNTY OF Shelby)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Terry L. Colafrancesco, 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 said instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this 28th day of March, 1997.



Notary Public

[AFFIX SEAL]

My Commission Expires: NOTARY PUBLIC STATE OF ALABAMA AT LARGE.
MY COMMISSION EXPIRES: July 7, 1999.
BONDED THRU NOTARY PUBLIC UNDERWRITERS.

This instrument prepared by:

Thomas C. Clark III
MAYNARD, COOPER & GALE, P.C.
1901 Sixth Avenue North
2400 AmSouth/Harbert Plaza
Birmingham, Alabama 35203-2602
(205) 254-1072

EXHIBIT A**(Description of Servient Parcel)**

Commence at the SW corner of the SW1/4 of NE1/4 of Section 31, Township 18 South, Range 1, East; thence east along the south line of said 1/4 1/4 Section 145.96 ft. Thence 90°00' to the left 721.55 ft. Thence 126°16'23" to the right 275.00 ft. Thence 90°00' to the left 10.22 ft. to the point of beginning of center line of said 20.00 ft. easement (10.00 ft. each side of the following described) thence 102°01'05" to the right along said center line 224.13 ft. Thence 18°46'27" to the left along said center line 195.90 ft. to the center line of Shelby County Highway #43 and end of said easement.

EXHIBIT B**(Description of Dominant Parcel)**

Commence at the Southwest corner of the Southwest quarter of the Northeast quarter of Section 31, Township 18 South, Range 1 East, Shelby County, Alabama and run thence centerly along the South line of said quarter-quarter section 145.96' to a point; Thence turn 90°00'00" left and run northerly 721.55' to the point of beginning of the property being described; Thence turn 36°16'23" right and run northeasterly 633.60' to a point; Thence turn 90°00'00" right and run southeasterly 275.00' to a point; Thence turn 90°00'00" right and run southwesterly 633.60' to a point; Thence turn 90°00'00" right and run northwesterly 275.00' to the point of beginning, containing 4.0 acres and marked on each corner with a steel pin. Property is subject to any and all agreements, easements, restrictions and/or limitations of probated record or applicable law.

LESS AND EXCEPT THE FOLLOWING:

Commence at the Southwest corner of the Southwest quarter of the Northeast quarter of Section 31, Township 18 South, Range 1 East, thence East along the South line of said quarter-quarter section 145.96 ft.; Thence 90 deg. 00 min. to the left 721.55 ft.; thence 125 deg. 16 min. 23 sec. to the right 275.00 ft.; Thence 90 deg. 00 min. to the left 232.64 ft. to the point of beginning of parcel herein described; thence continue along the last named course 71.78 ft. thence 44 deg. 31 min. 08 sec. to the left 24.47 ft.; Thence 47 deg. 42 min. to the left 26.25 ft.; Thence 23 min. 20 min. 18 sec. to the left 53.91 ft.; Thence 66 deg. 12 min. 34 sec. to the left 67.76 ft.; Thence 90 deg. 00 min. to the left 89.97 ft. to the point of beginning.

Inst # 1997-13717

05/02/1997-13717
01:44 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
006 SMA 22.00