

This instrument prepared by:
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Birmingham, AL 35203-3208

STATE OF ALABAMA)
 :
SHELBY COUNTY)

**FIRST AMENDMENT
TO
DECLARATION OF PROTECTIVE COVENANTS**

THIS FIRST AMENDMENT TO DECLARATION OF PROTECTIVE COVENANTS (this "Amendment") is made by **BIRMINGHAM REALTY COMPANY**, an Alabama corporation ("Declarant") on or as of the 19th day of May, 1997.

W I T N E S S E T H :

WHEREAS, pursuant to the terms of that certain Declaration of Protective Covenants (the "Declaration") dated April 12, 1994, which is recorded in the Office of the Judge of Probate of Shelby County, Alabama as Instrument No. 1994-14608, Declarant did proclaim, publish and declare that certain property, as more particularly described in the Declaration, was subject to certain restrictions; and

WHEREAS, by mistake, a portion of the Property was made subject to a restriction which was not intended to be applicable thereto; and

WHEREAS, Declarant desires to amend the Declaration to correct this mistake; and

WHEREAS, capitalized terms used herein but not defined shall have the meanings given to them in the Declaration.

NOW, THEREFORE, Declarant does hereby declare that the Declaration is amended as follows:

1. The restriction set forth in Section 4.2(xviii) of the Declaration was intended to restrict only that portion of the Property as is described on Exhibit A to that certain Warranty Deed executed by Declarant, as grantor, to Flagstar Enterprises, Inc., as grantee, dated December 14, 1993, which deed is recorded in the Office of the Judge of Probate of

Cash & Little

Shelby County, Alabama as Instrument No. 1993-40397 (the "Restricted Property"). As a result of a subdivision map having been filed, the Restricted Property is now described as Lot 4 and a portion of Lot 4-A of the Property. No portion of the Property other than the Restricted Property was intended to be made subject the restriction set forth in Section 4.2(xviii) of the Declaration, and the restriction set forth in this section was intended solely for the benefit of Flagstar Enterprises, Inc. as the owner of the property which is described as "Lot 5, Oak Mountain Commerce Place, as recorded in Map Book 18, page 58, in the Office of the Judge of Probate of Shelby County, Alabama" ("Lot 5"). Accordingly, Section 4.2(xviii) of the Declaration is hereby amended and restated in its entirety to read as follows:

"(xviii) With respect to Lots 4 and 4-A only, until January 1, 1999, any business whose sales of hamburgers, biscuits and/or chicken exceeds 50% of its gross sales (this restriction shall not apply to Lots 2 or 3 of the Property);"

2. The restriction described in paragraph 1 above, as amended and restated, shall (i) apply only to Lots 4 and 4-A of the Property, and (ii) be for the sole benefit of the owner of Lot 5.

3. Except as amended hereby, the Declaration is unchanged.

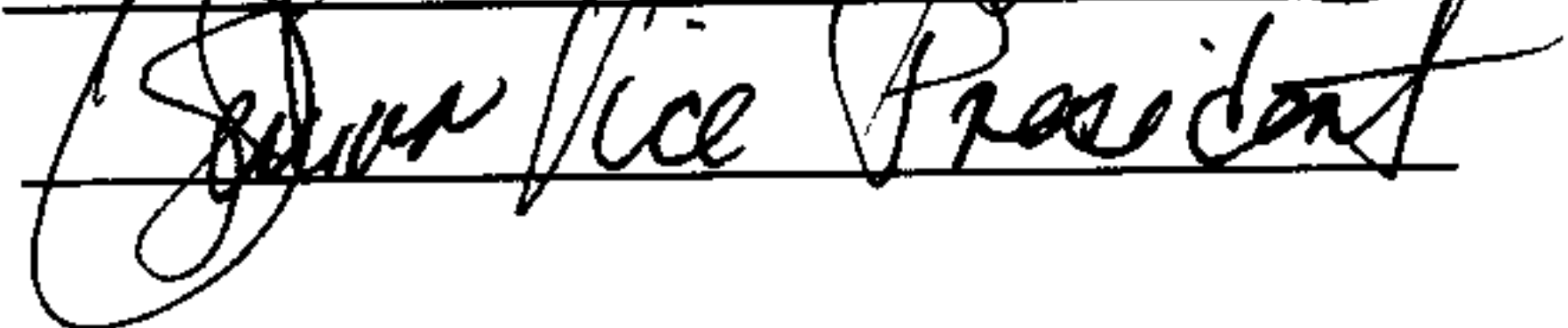
IN WITNESS WHEREOF, Declarant has executed this Amendment on or as of the date first above written.

DECLARANT:

BIRMINGHAM REALTY COMPANY

By

Its

STATE OF ALABAMA

JEFFERSON COUNTY

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I, the undersigned, a notary public in and for said county in said state, hereby certify that Stephen W. House, whose name as Gen. Vice President of Birmingham Realty Company, an Alabama 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 said 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 official seal this 19th day of May, 1997.

Manda Nail Stone
Notary Public

[NOTARIAL SEAL]

My commission expires: MY COMMISSION EXPIRES OCTOBER 11, 1998

Inst # 1997-15775