

STATE OF ALABAMA)
SHELBY COUNTY)

DECLARATION OF EASEMENTS

THIS DECLARATION OF EASEMENTS dated as of December 18, 1997, is made by **BW Leasing Company, L.L.C.**, an Alabama limited liability company ("BW Leasing Company"), and **David L. Szabo and Cheryl J. Szabo**, individuals (collectively, the "Szabos"; and together with BW Leasing Company, the "Declarants") and joined in-by **First Commercial Bank and National Bank of Commerce of Birmingham** (the "Mortgagees") for the purpose of evidencing their consent to the provisions of this Declaration of Easements.

WITNESSETH:

WHEREAS, BW Leasing Company is on the date of this Declaration purchasing from **G.B.S. Development Company, L.L.C.** the property described in Exhibit A attached hereto (the "BW Property"); and

WHEREAS, the Szabos own a certain parcel of property described in Exhibit B attached hereto (the "Szabo Property", and together with the BW Property, the "Parcels"), which is adjacent to and contiguous with the BW Property; and after BW Leasing Company purchases the BW Property, the Szabos will continue to own the Szabo Property; and

WHEREAS, the Declarants have determined that it is necessary and appropriate to create, grant and reserve certain easements and rights with respect to access, ingress, egress, parking, pedestrian and vehicular traffic over and across that certain property more particularly described on Exhibit C attached hereto (which consists of a portion of the BW Property and a portion of the Szabo Property) (the "Easement Property") for the use and benefit of the owners of such Parcels, their respective successors and assigns (all of which persons are hereafter referred to as the "Owners"), and their agents, customers, patrons, guests, invitees, licensees, and employees, servants, contractors, mortgagees, tenants and such tenants' agents, customers, patrons, guests, invitees, licensees, employees, servants, contractors and mortgagees (all of which persons are hereinafter referred to as the "Permittees").

NOW, THEREFORE, the Declarants hereby declare that the Parcels, and the various parcels now and hereafter constituting parts thereof, shall be benefitted and burdened by the following easements and rights:

1. **DECLARATION OF CROSS USAGE EASEMENTS.** The Declarants hereby create, declare and impose on the Easement Property for the benefit of the Szabo Property and for the benefit of the BW Property, the following easements:

(a) **Pedestrian Easements.** Non-exclusive easements for the purpose of pedestrian traffic among the Parcels and over, across, to and from (i) the BW Property, (ii) the Szabo

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Property, (iii) all private streets and roads now or hereafter abutting or located on the BW Property or the Szabo Property, (iv) all walkways, sidewalks, concourses and plazas now or hereafter abutting or located on, over or across the BW Property or the Szabo Property, (v) all parking areas now or hereafter abutting or located on the BW Property or the Szabo Property, and (vi) all entrances and exists now or hereafter abutting or located on the BW Property or the Szabo Property;

(b) Vehicular Easements. Non-exclusive easements for the purpose of vehicular traffic among the Parcels and over, across, to and from (i) the BW Property, (ii) the Szabo Property, (iii) all public streets and roads now or hereafter abutting or located on the BW Property or the Szabo Property, (iv) all private streets and roads now or hereafter abutting or located on the BW Property or the Szabo Property; (v) all parking areas now or hereafter abutting or located on the Easement Property, and (vi) all entrances and exits now or hereafter abutting or located on the BW Property or the Szabo Property;

(c) Parking Easements. Subject to Section 2 below, non-exclusive easements for the purpose of parking vehicles in all designated parking areas that may now or hereafter be located on the Easement Property.

(e) Access Easements. Non-exclusive easements among the Parcels and the public and private streets, roads and walkways abutting or crossing any part of the BW Property or the Szabo Property for the purpose of providing ingress, egress and access to the easements hereby created.

2. LIMITATIONS ON CROSS USAGE EASEMENTS. The Owner of each Parcel shall retain the right at any time to reserve any or all of the parking spaces located upon such Parcel for the exclusive use of its Permittees. Each Owner shall maintain parking spaces on its Parcel in a number sufficient to comply with all applicable governmental requirements.

3. UNIMPEDED ACCESS. No barricade or other divider will be constructed between any of the Parcels, and the Owners shall do nothing to prohibit or discourage the free and uninterrupted flow of pedestrian and vehicular traffic among the Parcels in the areas designated for such purpose by each Owner with respect to the property it owns that is subject to this Declaration of Easements; provided, however, that (i) the Owners shall have the right to erect barriers temporarily to avoid the possibility of dedicating such areas for public use or creating prescriptive rights therein; and (ii) each Owner shall have the right to erect such walls, fences or other artificial or natural barriers at the perimeter of, on or within its Parcel as may be necessary or convenient for the enjoyment of its rights in such Parcel so long as such barriers shall otherwise be in compliance with all laws, regulations and restrictions governing the use of such Parcel, and so long as gates, openings, doors or other means of free passage are provided so as to continue the unimpeded flow of pedestrian and vehicular access among the Parcels, subject, however, to the rights of the Owner to impose such reasonable rules, regulations and restrictions thereon as may be reasonably necessary and as may be contemplated pursuant to the provisions of Section 4 hereof.

4. **USE OF CROSS USAGE EASEMENTS.** Subject to the reasonable rules and regulations adopted for the use of the BW Property and/or the Szabo Property by the Owners thereof, the use of all easements created by this Agreement will, in each instance, be non-exclusive and for the use and benefit of the Owners and their Permittees. Each Declarant, for its benefit and for the benefit of its successors in title, specifically reserves the right, at any time and from time to time, (i) to promulgate such rules and regulations applicable to the BW Property or the Szabo Property, as the case may be, as might be reasonably imposed to promote the health, safety, welfare and security of the affected Parcels, any improvements located thereon and the applicable Permittees and (ii) to remove, exclude or restrain any person from the use, occupancy or enjoyment of any easement hereby created or the area covered thereby for the failure to observe any such reasonable rules and regulations so established. If unauthorized use is being made of any easement area, such unauthorized use may be restrained or terminated by appropriate proceedings after written notice to the defaulting Owner.

5. **MAINTENANCE OF EASEMENT AREAS.** Except to the extent that such areas might be operated and maintained by public authorities or utilities or that such operation and maintenance are otherwise provided in this Declaration, each Owner will operate and maintain, at its own expense, all the areas of its Parcel that are subject to the pedestrian, vehicular, parking and other easements created by this Declaration in sound structural and operating condition.

6. **DURATION OF EASEMENTS.** This Declaration and each easement created hereby will continue for a term of fifty (50) years from the date of this Declaration and will thereafter continue in full force and effect so long as any easement created hereby is used by any Owner.

7. **LEGAL EFFECT.** Each of the easements and rights created by this Declaration shall run with the land and shall be appurtenant to the Parcel to which it relates for the term specified in Section 6 and shall not be transferred, assigned or encumbered except as an appurtenance to such Parcel. Each covenant contained in this Declaration (i) constitutes a covenant running with the land, (ii) binds every Owner now having or hereafter acquiring an interest in any Parcel, and such Owner's successors, assigns and mortgagees, and (iii) will inure to the benefit of each Owner and each Owner's successors, assigns, and mortgagees. Upon conveyance of all or any part of any Parcel, the grantee, by accepting such conveyance, will thereby become a party to and be bound by this Declaration.

8. **NO DEDICATION.** Nothing contained in this Declaration will be deemed to constitute a gift, grant or dedication of any part of any Parcel to the general public or for any public purpose whatsoever, it being the intention of the Declarants that this Declaration will be strictly limited to the private use of the Owners and their respective Permittees. This Declaration is intended to benefit the Owners and their respective successors, assigns and mortgagees.

9. AMENDMENT. This Declaration may be amended only by an instrument in writing duly executed by all Owners who are affected by the terms of such amendment. No amendment shall be affected by any course of conduct or dealing among the Owners or by custom or practice.

10. SEVERABILITY. The provisions of this Declaration are severable, and in the event any provision hereof shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions hereof.

11. GOVERNING LAW. This Declaration shall in all respects be governed by and construed in accordance with the laws of the State of Alabama.

12. TIME OF THE ESSENCE. Time is of the essence in this Declaration.

13. EFFECT OF BREACH. Breach of any of the covenants contained in this Declaration shall not defeat or render invalid title to a Parcel or the lien of any mortgage or deed of trust made in good faith or for value as to any portion of any of the Parcels, but all of the foregoing easements and covenants shall be binding and effective against any Owner, including any Owner whose title is acquired by foreclosure, deed in lieu of foreclosure or otherwise.

IN WITNESS WHEREOF, each Declarant has caused this Declaration to be executed and attested by its duly authorized representative on the day and year first above written.

BW LEASING COMPANY, L.L.C.

By Kenneth E. Bush, Jr.
Kenneth E. Bush, Jr., Its Managing Member

By Bobby G. Darty
Bobby G. Darty, Its Managing Member

David L. Szabo
David L. Szabo

Cheryl J. Szabo
Cheryl J. Szabo

FIRST COMMERCIAL BANK

By: Anthony H. Green IV
Its: ATP

NATIONAL BANK OF COMMERCE OF BIRMINGHAM

By: W. B. H.
Its: Wide View President

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Kenneth E. Bush, Jr. and Bobby G. Darty, whose names as managing members of BW Leasing Company, L.L.C., an Alabama limited liability company, 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 managing members and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and official seal, this 15th day of December, 1997.

Gregory Williams
Notary Public

[AFFIX SEAL]

My Commission Expires: 9-2-2001

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that David L. Szabo, 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 18th day of December, 1997.

Bernard A. Selmore
Notary Public

[AFFIX SEAL]

My Commission Expires: 10/10/98

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Cheryl J. Szabo, 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, she executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this 18th day of December, 1997.

Barbara A. Gilmore
Notary Public

[AFFIX SEAL]

My Commission Expires: 10/10/98

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Hamp H. Greene, IV, whose name as Asst. Vice President of First Commercial 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 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 18th day of December, 1997.

Reverdy W. Shroder
Notary Public

[AFFIX SEAL]

My Commission Expires:

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: July 12, 1998
BONDED THRU NOTARY PUBLIC UNDERWRITERS

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Robert B. Aland, whose name as Senior Vice President of National Bank of Commerce of Birmingham, a national banking association, 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 banking association.

Given under my hand and official seal, this 15th day of December, 1997.

Sharon Williams
Notary Public

[AFFIX SEAL]

My Commission Expires: 9-2-2001

Exhibit A

(BW Property)

Part of the South 1/2 of the S.E. 1/4 of the N.W. 1/4 of Section 15, Township 19 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

Begin at a 2 1/2 inch capped iron at the Southwest corner of the S.E. 1/4 of the N.W. 1/4 of Section 15, Township 19 South, Range 2 West; thence run northerly along the West line of said 1/4 1/4 Section for 331.15 feet to an old axle, said axle being on the North line of said South 1/2 of South 1/2 said 1/4 1/4 Section; thence turn an angle to the right of 90° 38' 26" and run Easterly along the North line of the said South 1/2 of the South 1/2 for 953.28 feet to a rebar on the westerly right of way line of Caldwell Mill Road; thence turn an angle to the right of 50° 24' 38" and run southeasterly along the westerly right of way line of Caldwell Mill Road for 37.77 feet to a rebar; thence turn an angle to the right of 101° 01' 51" and run southwesterly for 204.69 feet to a nail; thence turn an angle to the left of 88° 35' 37" and run southeasterly for 234.21 feet to a 1 1/2 inch crimp iron, said iron also being on the South line of said South 1/2 of the South 1/2; thence turn an angle to the right of 117° 17' 38" and run westerly along the South line of said South 1/2 of the South 1/2 for 524.31 feet to the POINT OF BEGINNING; thence 90° 00' 00" to the right and run northerly for 220.38 feet; thence 90° 00' 00" left and run westerly for 263.42 feet to a point; thence 90° 00' 00" left and run southerly for 49.00 feet; thence 46° 44' 38" left and run southeasterly for 45.31 feet to a point; thence 46° 44' 38" right and run 140.43 feet southerly to the South line of said 1/2 of the South 1/2 of said 1/4 1/4 Section, said point being 146.00 feet east of the S.W. corner of the S.E. 1/4 of the N.W. 1/4 of Section 15, Township 19 South, Range 2 West; thence 90° 00' 00" left and run 230.42 feet along said South line of the South 1/2 of the South 1/2 of said 1/4 1/4 Section line to the POINT OF BEGINNING.

LESS AND EXCEPT ANY PORTION OF THE ABOVE-DESCRIBED PROPERTY WHICH LIES WITHIN THE FOLLOWING PROPERTY:

Part of the South 1/2 of the S.E. 1/4 of the N.W. 1/4 of Section 15, Township 19 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

Commence at a 2 1/2 inch capped iron at the Southwest corner of the S.E. 1/4 of the N.W. 1/4 of Section 15, Township 19 South, Range 2 West; thence run northerly along the West line of said 1/4 1/4 Section for 333.15 feet to an old axle, said axle being on the North line of said South 1/2 of the South 1/2 of said 1/4 1/4 section; thence turn an angle to the right of 90° 38' 26" and run easterly along the North line of the said South 1/2 of the South 1/2 for 953.28 feet to a rebar on the westerly right of way line of Caldwell Mill Road; thence turn an angle to the right of 50° 24' 38" and run southeasterly for 19.37 feet to the POINT OF BEGINNING of a 28 foot wide easement for ingress/egress for said proposed Lots 1, 2, 3, and 4; thence turn an angle to the right of 112° 30' 34" and run southwesterly for 269.86 feet along the center line of said easement to a point, said point being on a curve to the right, said curve

subtending a central angle of $27^{\circ}53'20''$ and having a radius of 68.25 feet; thence run along the arc of said curve for 33.22 feet to the end of said curve; thence at tangent to said curve run westerly for 578.39 feet along the center line of said 28.0 foot wide easement to the end of said easement.

Exhibit B

(Szabo Property)

Exhibit "B"

PARCEL A:

Part of the South 1/2 of the SE 1/4 of the NW 1/4 of Section 15, Township 19 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

Begin at a 2 1/2 inch capped iron at the Southwest corner of the SE 1/4 of the NW 1/4 of Section 15, Township 19 South, Range 2 West; thence run easterly along said 1/4 1/4 Section line for 376.42 feet to an iron pin set and the point of beginning; thence continue along same course for 234.00 to an iron pin set; thence 90°00'00" left and run northerly for 220.38 feet to an iron pin set; thence 90°00'00" left and run westerly for 234.00 feet to an iron pin set; thence 90°00'00" left and run for 220.38 feet to the point of beginning.

Less and Except any portion of the above described property which lies within the following described easement property:

Part of the South 1/2 of the SE 1/4 of the NW 1/4 of Section 15, Township 19 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows: Commence at a 2 1/2 inch capped iron at the southwest corner of the SE 1/4 of the NW 1/4 of Section 15, Township 19 South, Range 2 West; thence run northerly along the west line of said 1/4 1/4 Section for 333.15 feet to an Old Axle, said axle being on the north line of said south 1/2; thence turn an angle to the right of 90°38'26" and run easterly along the north line of the said south 1/2 for 953.28 feet to a rebar on the westerly right of way line of Caldwell Mill Road; thence turn an angle to the right of 50°24'38" and run southeasterly for 19.37 feet to the point of beginning of the centerline of a 28 foot wide easement; thence turn an angle to the right of 112°30'34" and run southwesterly for 269.86 feet along the center line of said easement to a point, said point being on a curve to the right, said curve subtending a central angle of 27°53'20" and having a radius of 68.25 feet; thence run along the arc of said curve for 33.22 feet to the end of said curve; thence at a tangent to said curve run westerly for 578.39 feet along the center line of said 28.0 foot wide easement to the end of said easement.

PARCEL B:

A 28.0 foot wide easement for ingress/egress and installation, use, and maintenance of utilities (including, without limitation, water, electricity, gas and telephone), sewer, and drainage on, over, across, through and under property described as follows:

Part of the south 1/2 of the SE 1/4 of the NW 1/4 of Section 15, Township 19 South Range 2 West, Shelby County, Alabama, being more particularly described as follows: commence at a 2 1/2 inch capped iron at the southwest corner of the SE 1/4 of the NW 1/4 of Section 15, Township 19 South, Range 2 West; thence run northerly along the west line of said 1/4 1/4 Section for 333.15 feet to an Old Axle, said axle being on the north line of said south 1/2 thence turn an angle to the right of 90°38'26" and run easterly along the north line of the said south 1/2 for 953.28 feet to a rebar on the westerly right of way line of Caldwell Mill Road; thence turn an angle to the right of 50°24'38" and run southeasterly for 19.37 feet to the point of beginning of the centerline of a 28 foot wide easement; thence turn an angle to the right of 112°30'34" and run southwesterly for 269.86 feet along the center line of said easement to a point, said point being on a curve to the right, said curve subtending a central angle of 27° 53' 20" and having a radius of 68.25 feet; thence run along the arc of said curve for 33.22 feet to the end of said curve; thence at tangent to said curve run westerly for 578.39 feet along the center line of said 28.0 foot wide easement to the end of said easement.

Exhibit C

(Easement Property)

Part of the South 1/2 of the S.E. 1/4 of the N.W. 1/4 of Section 15, Township 19 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

Commence at a 2 1/2 inch capped iron at the Southwest corner of the S.E. 1/4 of the N.W. 1/4 of Section 15, Township 19 South, Range 2 West; thence run northerly along the West line of said 1/4 1/4 Section for 333.15 feet to an old axle, said axle being on the North line of said South 1/2 of the South 1/2 of said 1/4 1/4 Section, thence turn an angle to the right of 90°38'26" and run easterly along the North line of the said South 1/2 of the South 1/2 for 953.28 feet to a rebar on the westerly right of way line of Caldwell Mill Road; thence turn an angle to the right of 50°24'38" and run Southeasterly for 19.37 feet to the center line of a 28 foot wide easement for ingress/egress for said proposed lots 1, 2, 3, and 4; thence turn an angle to the right of 112°30'34" and run southwesterly for 269.86 feet along the center line of said easement to a point, said point being on a curve to the right, said curve subtending a central angle of 27°53'20" and having a radius of 68.25 feet; thence run along the arc of said curve for 33.22 feet to the end of said curve; thence at tangent to said curve run westerly for 314.97 feet along the center line of said 28.0 foot wide easement to the POINT OF BEGINNING of the center line of said 24.0 wide easement to the POINT OF BEGINNING of the center line of said 24.0 wide ingress/egress easement; thence turn 90°00'00" to the left and run 185.10 feet to the end of said center line of said 24.0 foot wide easement.

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