

STATE OF ALABAMA)
SHELBY COUNTY)

**TENANCY IN COMMON
OPERATING AGREEMENT**

THIS AGREEMENT made and entered into on this 28th day of SEP., 1998 by and between:

FRANK C. ELLIS, JR., L.L.C. (Butch), FRANK C. ELLIS, III, L.L.C. (Corley),
BENNER INVESTMENTS, L.L.C. (Benner), MCGEEVER INVESTMENTS, L.L.C.
(McGeever) ROBERTSON INVESTMENTS, L.L.C. (Robertson).

WITNESSETH

WHEREAS,

A. All parties to this Agreement own an undivided interest in certain real property, more particularly described in Exhibit "A" attached hereto and incorporated herein by reference, together with all improvements situated thereon (hereinafter referred to as the "Subject Property").

B. The parties hereto, as tenants in common, desire to enter into this Agreement in order to provide for the collection and distribution of all income, if any, derived from the ownership of the Subject Property, and the payment of all expenses relating to the ownership of the Subject Property.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, the parties do hereby agree as follows:

1. OWNERSHIP OF SUBJECT PROPERTY. The Subject Property is and shall be owned and held by the said parties as tenants in common, subject to the terms and conditions of this Agreement. The percentage of ownership of the Subject Property is as follows:

<u>PARTY</u>	<u>PERCENTAGE OWNERSHIP</u>
Butch	25%
Corley	25%
Benner	16 2/3%
McGeever	16 2/3%
Robertson	16 2/3%
TOTAL	100 %

Nothing herein contained shall be construed to consider the parties as partners or joint venturers, nor, except as herein specifically provided, to constitute either party the agent of the other or in

any manner limit the parties in the carrying on of their respective businesses or activities. The provisions of this Agreement shall relate only to the specified purposes herein contained and shall not extend to any other matters relating to the conduct of the respective businesses of the parties.

2. PURPOSE. The sole purpose of this Agreement and the promises and covenants herein contained are as follows:

- (a) To establish an efficient method for the collection and distribution of all income derived from the ownership and operation of the Subject Property via sales and/or leases, and for the payment of all expenses relating to the ownership and operation of the Subject Property;
- (b) To provide a first right of refusal in favor of either party in the event that the other party desires to sell its interest in the Subject Property; and
- (c) To provide for the mandatory sale or purchase of the interest of either party by the other upon the occurrence of certain events as hereinafter provided.

3. MANAGEMENT. The management and operation of the Subject Property, including, without limitation, all questions relating to the management and operation of the Subject Property shall be determined by the majority consent of the parties; provided, however, in no event shall any party hereto have the right, without the prior written consent of the majority party, to:

- (a) Endorse any note or act as an accommodation party, or otherwise become a surety for the other party;
- (b) Borrow or lend money, or make, deliver or accept any commercial paper or execute any mortgage, bond or lease, or purchase, or contract to purchase, or sell or contract to sell any property, whether real or personal, for or on behalf of the other parties;
- (c) Sell, assign or mortgage or otherwise encumber his interest in the Subject Property or enter into any agreement as a result of which any other person or entity shall obtain any interest in the Subject Property;
- (d) Do any act detrimental to the best interests of the other party or which would make it impossible to carry out the purposes contemplated by this Agreement; or
- (e) The parties have made a note and mortgage in the amount of \$425,000.00 to First National Bank of Shelby County.
- (f) The parties shall set up a separate checking account entitled Highway 280 T.I.C., which until further notice, shall be administered by Sammy Smoke of Crest Realty, Inc. Sammy Smoke shall not expend any funds without the approvals outline in paragraph 3

above.

4. COLLECTION AND DISTRIBUTION OF INCOME:

(a) All income derived from the ownership and operation of the Subject Property, including specifically, all income derived under any sales or leases, shall be collected from any and all purchasers and/or tenants, if any, of the Subject Property by Crest Realty, as agent (the "Agent") for the parties hereto. The Agent designated herein may be changed from time to time and at any time upon the majority consent of the parties hereto. All amounts and other sums collected by the Agent arising out of or in connection with the operation of the Subject Property (the "Income") shall be held in trust by the Agent for the benefit of the Parties. The Income shall be distributed by the Agent between the Parties in accordance with the provisions and percentages of Paragraph 1, subject to the provisions of Paragraph 4(b) and Paragraph 5 below.

(b) All Income shall be disbursed and distributed by the Agent in the following manner:

- (i) First, to the debt service and/or principal of any outstanding mortgage(s)
- (ii) Second to the payment of all expenses incident to the improvements, operation, upkeep, maintenance and repair of the Subject Property;
- (iii) Third, the balance, if any, shall be distributed between the Parties in accordance with the percentage interests of each party set forth in Paragraph 1 hereof, subject to the provisions of Paragraph 5 below.

5. ADDITIONAL CONTRIBUTIONS.

(a) The parties hereto acknowledge that the income derived from the Subject Property may not be sufficient nor timely enough to pay all expense arising therefrom. Accordingly, each party agrees to contribute its proportionate share of additional funds (in accordance with the percentage of ownership of the Subject Property set forth in Paragraph 1 hereof) which may be necessary for the cost of improvements, continued maintenance, upkeep, repair and operation of the Subject Property, including, without limitation, all sums necessary to:

- (i) Pay for site improvement costs;
- (ii) Pay for repairs and improvements to the Subject Property, including all necessary replacement and restoration costs incident thereto;
- (iii) Pay all insurance and taxes with respect to the Subject Property;
- (iv) Pay all debt service which at any time may be due with respect to the Subject Property; and

(w) All other costs relating to the operation, upkeep and maintenance, and repair of the Subject Property. The obligation to contribute additional funds shall be mandatory and shall constitute a continuing lien upon the interest of each party in the Subject Property for the benefit of the other party.

(b) Each party does hereby indemnify the other parties from and against any and all claims, costs, damages, actions, causes of action, demands, costs and expenses, including reasonable attorney fees, suffered, paid or incurred by the other parties arising out of or in connection with the failure of any party to comply with and perform the obligations set forth in Paragraph 5(a) above.

(c) In the event any party (the "Defaulting Party") fails to pay its proportionate share of additional capital as required above within ten (10) days after notice of the amount due has been given, then the other parties (the "Non-defaulting Party") shall have the right, alternatively or cumulatively, to exercise either of the following rights:

(i) The Non-defaulting Party may elect to advance the amount due from the Defaulting Party and such an advance shall be treated as a loan from the Non-defaulting Party to the Defaulting Party which shall be payable upon demand, and shall bear interest from the date of the advance at the prime rate plus five percent (5%) as such prime rate may be in effect from time to time at Regions Bank of Alabama. Any such loan shall be secured by a continuing lien on the Defaulting Party's interest in the Subject Property which may be enforced by all methods available for the enforcement of liens, including foreclosure in the manner provided in a mortgage or deed of trust lien on real property. Each party hereby grants to the other party a power of sale in connection with said lien. The Non-defaulting Party, acting on behalf of the Defaulting Party, shall have the right and power to bid at foreclosure sale of the Defaulting Party's interest in the Subject Property and to acquire, hold, lease, mortgage and convey said interest. In the event the Non-defaulting Party shall elect to advance the amount due from the Defaulting Party, the Non-defaulting Party shall be entitled to all distributions of income otherwise due the Defaulting Party until the advance together with all of interest accrued thereon has been repaid in full; or

(ii) The Non-defaulting Party may bring suit against the Defaulting Party for breach of this Agreement and may seek specific performance of the Defaulting Party's obligations hereunder as well as damages sustained by the Non-defaulting Party by reason of such breach. In the event the Non-defaulting Party prevails in any such action, the Defaulting Party shall reimburse the Non-defaulting Party for all costs and expenses, including attorneys' fees, incurred by the Non-defaulting Party in connection therewith.

(d) The Non-defaulting Party shall notify the Defaulting Party, within sixty (60) days after default, of the option to be exercised under this Paragraph 5(c). The selection of one option in the case of default shall not preclude the selection of any other option in the

event of any further default.

(e) Each party hereby constitutes and appoints the other party as its agent and attorney in fact for the purpose of executing and delivering any and all instruments or documents necessary to give full force and effect to any of the provisions of this Paragraph 5. The power of attorney granted herein, being coupled with an interest, is irrevocable and shall not be revoked by the death of either party or the sale by either party of all or any portion of its interest in the Subject Property.

6. RESTRICTIONS ON TRANSFER.

(a) Except as hereinafter set forth, none of the parties hereto shall sell, dispose or, transfer, assign, mortgage or otherwise encumber all or any part of his respective undivided interests in the Subject Property, without the prior written approval of the other parties, which approval shall not be unreasonably withheld. In the event of any such disposition, transfer or encumbrance with the prior written consent of the remaining parties, the assignee of such undivided interest in the Subject Property shall take such interest subject to all the terms and conditions of this Agreement and shall execute such additional instruments as counsel for the remaining party shall reasonably deem proper, acknowledging that such assignee is bound by the terms of this Agreement and assuming all obligations of the assignor under this Agreement from and after the effective date of the transfer.

(b) Notwithstanding anything to the contrary provided herein, each party does hereby waive any and all rights to further partition the Subject Property or any part thereof; it being expressly understood and agreed that this Agreement shall at all times govern the ownership and operation of the Subject Property.

(c) Notwithstanding anything to the contrary provided in herein, each of the parties to this Agreement may devise, bequeath or convey to any one or more of their respective heirs all or any part of such party's undivided interest in Subject Property, said heirs or grantees to be subject to the terms and conditions of this Agreement.

7. RIGHT OF REFUSAL. Subject to the provisions of Paragraph 6 above, if any party to this Agreement desires to sell all or any part of its interest in the Subject Property (including any undivided interest of such party), such parties (the "Selling Party") does hereby grant the other party the first right of refusal to purchase such interest as hereinafter provided and may sell the same to any other prospective bona fide purchaser only if such first right of refusal is not exercised, all in accordance with the following:

(a) The selling party shall give written notice to the other parties (hereinafter sometimes referred to as the "Offerees") that the Selling Party has a bona fide offer for the purchase of such interest, which notice shall set forth the interest to be sold, the name and address of the prospective purchaser, the sales price and all other terms and conditions of the proposed sale.

(b) For a period of thirty (30) days after delivery of such notice, the Offerees shall have the first right within which to purchase the same on the same terms and conditions set forth in such bona fide offer. Such right shall exist to all Offerees in proportion to their ownership interest in the Subject Property. In the event the Offerees exercises the right of first refusal granted herein, the Selling Party shall, on or before thirty (30) days after receipt of the Offeree's notice of its election to exercise the right of first refusal granted herein, convey to the Offerees the interest offered for sale by warranty deed, subject only to existing mortgages, liens, encumbrances, easements, restrictions, leases, and other matters of record at the time of execution of this Agreement or imposed by unanimous consent of the parties thereafter.

(c) If the Offerees fail to elect to purchase the entire interest (whether in proportion to their ownership interest or otherwise) of the Selling Party as set forth in the selling parties notice, within said period, then the Selling Party shall be free to sell the same to the prospective purchaser at the price and upon the terms and conditions set forth in such bona fide offer; provided, however, that such sale must be consummated within three (3) months following the termination of the Offeree's first right of refusal.

(d) Any bona fide purchaser shall be bound by the terms of this Agreement in the place and stead of the Selling Party. Any such Selling Party shall nevertheless remain liable with respect to any accrued personal obligations undertaken with respect hereto and shall not be in default thereof at the time of such sale, but shall not be liable for obligations accruing after the date of such sale if all of the interest of the Selling Party is sold.

(e) If any such sale is not consummated between the Selling Party and its bona fide purchaser within the three (3) month period provided in Paragraph 7(c) hereof, all of the terms, conditions and restrictions of this Agreement shall be reinstated and the right of the Selling Party to sell said interest to such purchaser shall terminate.

8. "PUT-CALL"

(a) Any Party at any time may institute the "Put-Call" provisions contained in this paragraph 8. The Party electing to initiate the "Put-Call" provisions (the "Offeror") shall notify the other Parties (the "Offerees") in writing of the price and terms upon which the Offeror offers to pay for a one percent undivided interest in the Subject Property (the "Price") and such offer shall also contain an offer to purchase all of the interest in the Subject Property of the Offerees at the Price. Such offer shall be irrevocable. Within thirty (30) days of the Offeror's notice, each of the Offerees shall either:

(i) agree to purchase:

(A) A proportionate share of Offeror's interest in the Subject Property (such proportion equaling the Offeree's appropriate proportionate ownership interest) at the Price; and

(B) Agree to purchase the interest in the Subject Property of any other Offerees who are not willing to purchase the proportionate share of the interest in the Subject Property of Offeror (the "Refusing Offeree(s)"); and

(C) Agree to purchase any interest in the Subject Property of Offeror which would otherwise have been purchased by a Refusing Offeree; or

(ii) Agree to sell the interest in the Subject Property of such Offeree to the Offeror or to any other Offeree who gives the notice set forth in paragraph 8(i) above.

(iii) Any Offeree(s) failing to timely give the notice provided in paragraphs 8(a)(i) or (ii) above shall be deemed to have agreed to sell his interest in the Subject Property at the Price.

(b) For the purpose of this "Put-Call" provision, any Offeree(s) who desires to purchase the interest in the Subject Property of Offeror as well as the interest in the Subject Property of the Refusing Offeree(s) shall be entitled to priority in the right to purchase all such interest in the Subject Property over the right of Offeror, that is, unless all Offerees agree to sell their interest in the Subject Property to Offeror, the Offeree(s) desiring the purchase shall be entitled to purchase. Nothing contained herein shall be deemed to prevent the Offeree(s) desiring to purchase from allowing a Refusing Offeree to maintain his position.

(c) The closing of the sale provided for in this paragraph 8 shall occur within sixty (60) days of Offeror's original notice.

9. MISCELLANEOUS.

(a) The term of this Agreement shall commence on the date hereof and shall continue until the occurrence of the first of the following:

(i) Mutual agreement to terminate this Agreement by the parties hereto;

(ii) The sale of the entire interest of all parties hereto in the Subject Property; or

(iii) the expiration of fifty (50) years from the date hereof.

(b) Any notices and demands hereunder shall be in writing and shall be deemed to have been given and received forty eight (48) hours after the same shall have been deposited in the United States Registered or Certified Mail, postage prepaid, addressed to the parties hereto as follows:

TO: Frank C. Ellis, Jr., L.L.C.
PO BOX 587
Columbiana AL 35051

TO: Frank C. Ellis, III, L.L.C.
PO BOX 587
Columbiana AL 35051

TO: Benner Investments, L.L.C.
c/o Crest Realty
162 Cahaba Valley Road
Pelham AL 35124

TO: McGeever Investments, L.L.C.
c/o Crest Realty
162 Cahaba Valley Road
Pelham AL 35124

TO: Robertson Investments, L.L.C.
c/o Crest Realty
162 Cahaba Valley Road
Pelham AL 35124

The parties shall each have the right by notice, in writing, given to the other to change, from time to time, the respective addresses at which such notices shall be given to them.

(c) This Agreement shall be governed by the laws of the State of Alabama.

(d) The captions or headings in this Agreement are made for convenience and general reference only and shall not be construed to describe, define or limit the scope or intent of the provisions of this Agreement.

(e) This Agreement shall be binding upon all the parties hereto, and their respective heirs, executors, administrators, successors and assigns, provided that no assignment shall be made except in strict conformity with this Agreement.

(f) Meaning of Particular Terms: Whenever used, the singular number shall include the plural and the plural the singular, and pronouns of one gender shall include all genders; and the words "Mortgagor" and "Mortgagee" shall include their respective successors and assigns. Plural or singular words used herein to designate the undersigned shall be construed to refer to the maker or makers of this instrument, whether one or more natural persons, corporations, associations, partnerships or other entities.

(g) The provisions of this Agreement shall be severable and if any provision shall be invalid, void or unenforceable, in whole or in part for any reason, the remaining provisions shall remain in full force and effect.

(h) This Agreement may not be changed, modified or amended orally. Any

modifications must be in writing signed by the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

FRANK C. ELLIS, JR., L.L.C.

By: Frank C. Ellis, Jr.

Its: Manager

FRANK C. ELLIS, III, L.L.C.

By: Frank C. Ellis III

Its: Manager

BENNER INVESTMENTS, L.L.C.

By: [Signature]

Its: MANAGER

MCGEEVER INVESTMENTS, L.L.C.

By: John Mc Geever

Its: Manager

ROBERTSON INVESTMENTS, L.L.C.

By: William R. Robertson

Its: MANAGER

STATE OF ALABAMA)
Shelby COUNTY)

I, the undersigned, a Notary Public, in and for said County in said State, hereby certify that Frank C. Ellis, Jr. as manager of the FRANK C. ELLIS, JR., L.L.C. Company, 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 this instrument, he, in their capacity as such manager, executed the same voluntarily, for and as the act of said limited liability company.

Given under my hand and official seal this 28 day of September, 1998

Paula Head

Notary Public

My Commission Expires: 1-19-2000

STATE OF ALABAMA)

Shelby COUNTY)

I, the undersigned, a Notary Public, in and for said County in said State, hereby certify that Frank C. Ellis, III as manager of the FRANK C. ELLIS, III, L.L.C. Company, whose name as member 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 this instrument, he, in their capacity as such ~~member~~ ^{manager}, executed the same voluntarily, for and as the act of said limited liability company.

Given under my hand and official seal this 28 day of September, 1998.

Paula Head

Notary Public

My Commission Expires: 1-19-2000

STATE OF ALABAMA)

Shelby COUNTY)

I, the undersigned, a Notary Public, in and for said County in said State, hereby certify that John Benner as MANAGER of the BENNER INVESTMENTS, L.L.C. Company, whose name member 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 this instrument, he, in their capacity as such member, executed the same voluntarily, for and as the act of said limited liability company.

Given under my hand and official seal this 28 day of September, 1998.

Cecil A. Humphreys

Notary Public

My Commission Expires: NOTARY PUBLIC STATE OF ALABAMA AT LARGE. MY COMMISSION EXPIRES: Feb. 13, 2002. BONDED THRU NOTARY PUBLIC UNDERWRITERS.

STATE OF ALABAMA)

Shelby COUNTY)

I, the undersigned, a Notary Public, in and for said County in said State, hereby certify that John McBeever as MANAGER of the McGEEVER INVESTMENTS, L.L.C. Company, whose name member 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 this instrument, he, in their capacity as such member, executed the

same voluntarily, for and as the act of said limited liability company.

Given under my hand and official seal this 29 day of September, 1998

Paul A. Humphreys
Notary Public

My Commission Expires NOTARY PUBLIC STATE OF ALABAMA AT LARGE.
MY COMMISSION EXPIRES: Feb. 13, 2002.
BONDED THRU NOTARY PUBLIC UNDERWRITERS.

STATE OF ALABAMA)
Shelby COUNTY)

I, the undersigned, a Notary Public, in and for said County in said State, hereby certify that WILLIAM R. ROBERTSON MANAGER of the ROBERTSON INVESTMENTS, L.L.C. Company, 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 this instrument, he, in their capacity as such _____, executed the same voluntarily, for and as the act of said limited liability company.

Given under my hand and official seal this 28 day of September, 1998

Paul A. Humphreys
Notary Public

My Commission Expires NOTARY PUBLIC STATE OF ALABAMA AT LARGE.
MY COMMISSION EXPIRES: Feb. 13, 2002.
BONDED THRU NOTARY PUBLIC UNDERWRITERS.

EXHIBIT 'A'

A part of the NE 1/4 of the SE 1/4 of Section 31, Township 18 South, Range 1 West, being more particularly described as follows:

Begin at the northeast corner of the NE 1/4 of the SE 1/4 of Section 31, Township 18 South, Range 1 West; thence south along the east line of said 1/4-1/4 section a distance of 1120.00 feet to a point on the northerly right of way line of U.S. Highway 280; thence 69 degrees 32 minutes 40 seconds to the right in a southwesterly direction along said R.O.W. line a distance of 61.34 feet to a point; thence 110 degrees 20 minutes to the right in a northerly direction a distance of 374.59 feet to a point; thence 90 degrees 00 minutes to the left in a westerly direction a distance of 205.00 feet to a point; thence 89 degrees 32 minutes 03 seconds to the right in a northerly direction a distance of 767.32 feet to a point on the north line of the NE 1/4 of the SE 1/4 of said Section 31; thence 90 degrees 34 minutes 05 seconds to the right in an easterly direction along the north line of said 1/4-1/4 section a distance of 271.15 feet to the point of beginning.

Inst # 1998-38081

09/30/1998-38081
10:14 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
012 CRH 39.00