

STATE OF ALABAMA     )  
COUNTY OF SHELBY    )

### DECLARATION OF EASEMENT

This Declaration of Easement ("Easement") is made this 19<sup>th</sup> day of April, 1999 by **SouthMark Properties, L.L.C.**, an Alabama limited liability company, **Interstate Restaurant Investors, L.L.P.**, an Alabama limited liability partnership, and **Frank C. Ellis, Jr.** (hereinafter collectively "Declarant").

#### Recitals

WHEREAS, Declarant is the owner of certain real property located in Resource Center Subdivision ("Subdivision") in Shelby County, Alabama, more particularly described on Exhibit "A" attached hereto and made a part hereof by this reference ("Benefitted Land"); and

WHEREAS, Declarant is also the owner of other land located in the Subdivision described on Exhibit "B" attached hereto and made a part hereof ("Burdened Land"); and

WHEREAS, Declarant has determined the desirability of the creation, establishment, and reservation of a nonexclusive easement for the benefit of the Benefitted Land on, over, under and across a portion of Lot 2-A of the Burdened Land described on Exhibit "C" ("Easement Area") for the purpose of locating sanitary sewer lines and providing for sanitary sewer drainage as provided herein; and

NOW, THEREFORE, for and in consideration of the foregoing recitals, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, Declarant does the following:

1. **Sewer Easement.** Declarant hereby grants, bargains, sells and conveys to all owners, lessees or occupants of the Benefitted Land a nonexclusive permanent easement on, under, over, and across the Easement Area to install, utilize, maintain, manage, repair, operate, or otherwise service the sanitary sewer lines located in the Easement Area ("Sewer Easement"). The owner of the Benefitted Land shall maintain the sanitary sewer lines located in the Easement Area in good condition and repair, and if any repairs are required, such repairs will be made in a good and workmanlike manner, without unreasonable delay, and at a time which does not unreasonably interfere with the business operations (including availability of parking) of the occupant of the Burdened Land preferably, if possible, during periods when the occupant of the Burdened Land is not open for business. Declarant shall promptly repair any damage to the Burdened Land caused by the exercise of its rights under this Easement and shall restore the

Burdened Land to as near as practicable the condition which existed prior to such activities. All sanitary sewer facilities within the Easement Area shall be underground.

2. **Covenants Run with Land.** All the covenants, agreements, and restrictions set forth in this Easement are intended to be and shall be construed as covenants running with the Easement Area and the Benefitted Land and shall benefit and burden each successive owner of the Easement Area and the Benefitted Land on the terms, conditions and provisions set forth in this Easement solely during the period of their ownership of the Benefitted Land and Easement Area. This Easement is binding upon and inures to the benefit of Declarant and its future purchasers, successors in title, and assigns. Each owner of the Benefitted Land is responsible and liable for the obligations imposed upon the owner of the Benefitted Land only during the period of its ownership of the Benefitted Land and shall be released from any liability under this Easement from and after its conveyance of ownership of the Benefitted Land.

3. **Indemnity.** Declarant or future owners, as the case may be, shall indemnify and hold harmless the owner or occupant of the Burdened Land from any loss, damage, liability or expense, including reasonable attorney's fees, arising out of the exercise of its rights under this Easement or its failure to comply with its obligations hereunder.

4. **Notices.** Any notice, demand, request, consent, approval, designation or other communication which any party hereto is required or desires to give or make or communicate to any other party shall be in writing and shall be given or made or communicated by United States mail or by recognized express mail service or overnight delivery service, addressed as follows:

If to Declarant: Interstate Restaurant Investors, L.L.P.  
c/o Crest Realty  
162 Cahaba Valley Road  
Birmingham, Alabama 35124

Declarant may designate a different address by written notice given in accordance herewith. Notice shall be deemed to have been given, made or communicated, as the case may be, on the date two (2) days following deposit in the United States mail with first class postage fully prepaid or upon the receipt from an express mail delivery service.

5. **Captions.** The captions of the paragraphs of this Easement are for convenience only and shall not be considered nor referred to in resolving questions of the interpretation and construction.

6. **Time of the Essence.** Time is of the essence with respect to the performance of each of the covenants and agreements contained in this Easement.

7. **Consents.** In any instance in which any party to this Easement shall be requested to consent to or approve of any matter with respect to which a party's consent or approval is required by any of the provisions of this Easement, such consent or approval shall be given in writing. Wherever in this Easement approval of either party is required, such approval or disapproval shall be given within ten (10) days following the receipt of notice requesting approval or disapproval together with the item to be so approved or disapproved, or the same shall be conclusively deemed to have been approved by such party. Any disapproval may specify with particularity the reasons therefor.

8. **Entire Agreement.** This Easement contains the entire agreement between the parties relating to this subject matter hereof and no modification or amendment hereto shall be of any force or effect unless it shall be in writing and signed by the parties hereto.

9. **Severability.** If any term, provision or condition contained in this Easement shall, to any extent, be invalid or unenforceable, the remainder of this Easement shall be valid and enforceable to the fullest extent permitted by law.

10. **Governing Law.** This Easement shall be construed in accordance with the laws of the State of Alabama.

11. **Counterparts.** This Easement may be executed in multiple counterparts, each of which together shall constitute one original.

12. **Authority.** The parties hereto have the right and authority to make the agreements contained herein without the approval or consent of any third parties, including but not limited to any mortgagees.

13. **Execution.** The parties hereto, by their duly authorized officials have executed this Easement as of the date first above written.

[SIGNATURE PAGE FOLLOWS]

**SOUTHMARK PROPERTIES, L.L.C.,**  
an Alabama limited liability company

By: \_\_\_\_\_

Its: \_\_\_\_\_

**INTERSTATE RESTAURANT INVESTORS, L.L.P.,**  
an Alabama limited liability partnership

By: \_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_  
Frank C. Ellis, Jr.



STATE OF ALABAMA     )  
                                      )  
COUNTY OF                 )

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that James A. Bruno, whose name as Member of **SouthMark Properties, L.L.C.**, an Alabama limited liability company, 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 member and with full authority, executed the same voluntarily as the act of the limited liability company on the day the same bears date.

Given under my hand this the 9<sup>th</sup> day of April, 1999.

Monique K. Linnay  
Notary Public  
My Commission Expires: March 11, 2003

STATE OF ALABAMA     )  
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COUNTY OF                 )

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that JOHN MCGEEVER, whose name as Partner of **Interstate Restaurant Investors, L.L.P.**, an Alabama limited liability partnership, 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 partner and with full authority, executed the same voluntarily as the act of the limited liability partnership on the day the same bears date.

Given under my hand this the 8<sup>th</sup> day of April, 1999.

Judith Ann Lermusky  
Notary Public  
My Commission Expires: 1-11-03

STATE OF ALABAMA )

COUNTY OF )

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that **Frank C. Ellis, Jr.**, 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 this the 19<sup>th</sup> day of April, 1999.

Paula Head  
Notary Public  
My Commission Expires: Jan. 19, 2000

**Exhibit "A"**

Lot 2-C, according to the survey of Resource Center, as recorded in Map Book 24, Page 118, in the Probate Office of Shelby County, Alabama. Situated in Shelby County, Alabama.

**Exhibit "B"**

Lot 2-A, according to the survey of Resource Center, as recorded in Map Book 24, Page 118, in the Probate Office of Shelby County, Alabama. Situated in Shelby County, Alabama.



### **Exhibit "C"**

The following is a legal description of the centerline of a fifteen foot wide easement, being 7.5 ft. on both sides of said centerline and being more particularly described as follows:

Commence at the northeast corner of Lot 2C of Resource Center, a commercial subdivision situated in the Southwest quarter of the Norwest quarter of Section 35, Township 18 South, Range 2 West, Shelby County, Alabama, which subdivision is recorded in Map Book 24, Page 118 (the "Record Map") in the Judge of Probate Office of Shelby County; thence run South 80.0 feet long the Easterly line of said Lot 2C (which is also the Westerly line of Lot 2A) to the point of beginning; thence left 133-00'-00" and leaving said property line run in a Northeasterly direction 105.0 feet; thence left 23-30'-00" run in a Northeasterly direction 16.5 feet to a point on the Southwesterly boundary of an existing public sanitary sewer easement, which easement is shown on said Record Map, and which point is the end of this easement.

Inst # 1999-21335

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09:09 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
009 HRS 29.00