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The entire consideration was paid from a mortgage loan closed simultaneous herewith.

Inst. # 2001-39178

SEND TAX NOTICE TO:  
280 Plaza, LLC

STATE OF ALABAMA )  
COUNTY OF SHELBY )

09/12/2001-39178  
08:35 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
003 MSB 18.00

**STATUTORY WARRANTY DEED**

**THIS IS A STATUTORY WARRANTY DEED** executed and delivered this 6<sup>th</sup> day of September, 2001, by **CLP Corporation**, an Alabama corporation (hereinafter referred to as the "Grantor"), to **280 Plaza, LLC**, an Alabama limited liability company (hereinafter referred to as the "Grantee").

**KNOW ALL MEN BY THESE PRESENTS:**

That in consideration of the sum of Ten and 00/100 Dollars (\$10.00) in hand paid by Grantee to Grantor and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Grantor, the Grantor do by these presents, grant, bargain, sell and convey unto the Grantee the following described real estate situated in the City of Birmingham, Shelby County, Alabama (the "Property"):

**Lots 9-A and 9-B**, according to a Resurvey as recorded in Map Brook 13, Page 76, in the Office of the Judge of Probate of Shelby County, Alabama of Lot 8-A, Cahaba Park South and Lot 9, Cahaba Park South;

**TOGETHER WITH** all appurtenances thereto belonging or in anywise appertaining and all right, title and interest of Grantor in and to any and all roads, alleys and ways bounding the Property.

This conveyance is subject to the following:

1. Ad valorem taxes for tax year 2001 and subsequent years;
2. Easements, rights-of-way and restrictions of record which affect said property; and
3. The Restrictive Covenant set out hereinbelow.

**TO HAVE AND TO HOLD**, to the said Grantee, its successors and assigns forever.

The said Grantor does for itself, its successors and assigns, covenant with said Grantee, its successors and assigns, that it, and its successors and assigns, shall warrant and defend the same to the said Grantee, its successors and assigns, forever, against the lawful claims of all persons claiming by or through the Grantor, but not further or otherwise.

**Restrictive Covenant**

**1. Restricted Uses.**

The use of the above mentioned Property (the "Burdened Property") is restricted in favor of the adjacent property owned by McDonald's Corporation and operated by the Grantor (the

“Benefited Property”). The Benefited Property is described as:

Lot 1, according to the map of Cahaba Park South, as recorded in Map Book 9, Page 164, in the Probate Office of Shelby County, Alabama.

The Burdened Property is restricted against use as a quick service restaurant or ice cream shop for a term equal to the greater of fifty (50) years or so long as the Benefited Property shall be used as a quick service restaurant. The term “quick service restaurant” is typically distinguished by the following characteristics:

- A standardized and restricted menu
- Food for immediate consumption
- Tight individual portion control on all ingredients and on the finished product
- Individual packaging of each item
- A young and unskilled labor force
- Counter Service

By way of example only, the following restaurants are included within the definition ‘quick service restaurants’ and are prohibited:

Arby’s	Haagen-Daas	Rally’s
Baskin Robbins	Hardee’s	Roly Poly
Blimpie’s	Jack’s Restaurant	Shoney’s
Burger King	Kentucky Fried Chicken (KFC)	Sonic
Denny’s	Krystal	Starbucks
Domino’s	Nathan’s	Subway
Fuddrucker’s	Pizza Hut	Taco Bell
		TCBY Yogurt
		Wendy’s

The following uses are not included in the definition of ‘quick service restaurant’ and are thus permitted uses for the Property: a fine dining restaurant (white tablecloth), a casual dining restaurant (except for a restaurant specializing in hamburgers), or a catering operation. A casual dining restaurant is defined to include a diner serving prepared meals, a sports bar/restaurant, and restaurants and delicatessens serving soups and prepared to order sandwiches (the most marginal of which is McAllister’s.)

## **2. Enforcement.**

(a) In the event of a violation or breach of this restriction or any amendments thereto by any owner of the Property, or portion thereof, or employee, agent or lessee of such owner, the then-owner of the Benefited Property shall have the right to proceed at law or in equity to compel compliance with the terms and conditions hereof, to prevent the violations or breach of said restrictions, to sue for and recover damages or other dues, or take all such courses of action at the same time, or such other legal remedy such owner may deem appropriate. No delay or failure on the part of such owner to initiate an available remedy set forth herein shall be held to be a waiver by such owner or an estoppel to assert any right available upon the recurrence or continuation of said violation or the occurrence of a different violation.

(b) Damages shall not be deemed adequate compensation for any breach or violation of any provision hereof, and such owner of the Benefited Property shall be entitled specifically to relief by way of injunction as well as any other available relief either at law or in equity.

(c) Such owner, if successful in enforcing the restriction or enjoining the violation of the restriction against an owner of the Burdened Property, or any portion thereof, may be awarded a reasonable attorney's fee against such owner.

**3. Covenants Running with Land.**

Except as otherwise herein provided, each and all of the covenants, restrictions, conditions and provisions contained in this Restrictive Covenant (a) are made for the direct and mutual benefit of the Benefited Property, and will constitute covenants running with the land; (b) will bind every owner of a portion of the Burdened Property to the extent that such portion is affected or bound by the Restrictive Covenant; and (c) will inure to the benefit of the parties and their respective successors and assigns.

IN WITNESS WHEREOF, the Grantor has caused this Statutory Warranty Deed to be executed the date first written above.

CLP Corporation

By: Edward J. Levins  
Edward J. Levins  
Its: 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 Edward J. Levins, whose name as President of CLP Corporation, an Alabama corporation is signed to the foregoing Statutory Warranty Deed and who is known to me, acknowledged before me on this day that, being informed of the contents of said Deed, he, in his capacity as such officer and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand this the 6<sup>th</sup> day of September, 2001.

Alfred M. ...  
Notary Public

My Commission Expires: 5-1-05

(Notarial Seal)

**THIS INSTRUMENT PREPARED BY:**

Chervis Isom, Esq.  
Berkowitz, Lefkovits, Isom & Kushner  
A Professional Corporation  
420 N. 20th Street, Suite 1600  
SouthTrust Tower  
Birmingham, Alabama 35203  
014040-000144

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