

*This instrument prepared by:*  
*John E. Hagefstration, Jr.*  
*Bradley Arant Rose & White LLP*  
*2001 Park Place, Suite 1400*  
*Birmingham, Alabama 35203-2736*

Inst # 2002-17217  
04/12/2002-17217  
12:28 PM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
38.00  
MSB 009

## DECLARATION OF EASEMENT

**THIS DECLARATION OF EASEMENT** is made and entered into as of the 2nd day of April, 2002, by **SHELBY COMMERCE PARK LLC**, an Alabama limited liability company ("Declarant").

### RECITALS:

A. Declarant is the owner of that certain real property ("Parcel 1") situated in Shelby County, Alabama, which is more particularly described in Exhibit A attached hereto and incorporated herein by reference.

B. Contemporaneously herewith, Declarant is conveying undivided interests in that certain real property ("Parcel 2") situated in Shelby County, Alabama, which is more particularly described in Exhibit B attached hereto and incorporated herein by reference, to O'Brien LLC and Dixon LLC.

C. Declarant, with the consent and approval of the mortgagee of Parcel 1 and Parcel 2, whose consent is attached hereto and incorporated herein by reference, desires to establish an access easement over, across, through and upon a portion of Parcel 1 and Parcel 2 in order to provide access to and from such parcels and that certain public roadway which abuts them known as U. S. Highway 31 ("Highway 31").

**NOW, THEREFORE**, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Declarant does hereby declare and establish, for the benefit of Parcel 1 and Parcel 2, a permanent, perpetual and non-exclusive easement over, across, through, under and upon the property which is more particularly described on Exhibit C attached hereto and incorporated herein by reference (the "Easement Property") for the purposes of (a) providing pedestrian and vehicular access from Highway 31 to Parcel 1 and Parcel 2 and (b) constructing, installing, operating, maintaining, repairing and replacing

above or below ground utility lines, pipes, conduit, wiring and other apparatus within such Easement Property.

The easements granted herein shall include all rights and privileges necessary or convenient for the full enjoyment and use of the same, including the right to grade, excavate and cut trees and other underbrush on the Easement Property and to repair and maintain all improvements located thereon and shall be and is a covenant running with the land which shall be binding upon and inure to the benefit Declarant and its successors and assigns.

By ownership of an interest in or acceptance of a deed thereto, Declarant and the current and all future owners of Parcel 1 and Parcel 2 (collectively, the "Owners") do hereby agree as follows:

1. No barricade or other divider will be constructed between said parcels and the Owners will do nothing to prohibit or discourage the free and uninterrupted flow of pedestrian and vehicular traffic across the Easement Property; provided that each Owner will have the right to temporarily erect barriers to avoid the possibility of dedicating such areas for public use or creating prescriptive rights therein.

2. Except as might otherwise specifically be agreed to in writing by the Owners or to the extent that such areas might be operated or maintained by public authorities or utilities, the Owners shall share equally in the costs of repairing and maintaining the Easement Property related to pedestrian and vehicular traffic. Each Owner will be responsible for repairing and maintaining all utilities located with the Easement Property which serve solely its property and shall be responsible for payment of any expenses occasioned thereby. If any such utilities serve both parcels, the Owner of each parcel shall pay the costs and expenses of repairing and maintaining such utilities in accordance with a ratio, the numerator of which is the gross rentable area of the improvements located on its parcel and the denominator of which is the total gross rentable area of the improvements located on both parcels.

3. Each Owner agrees to indemnify and hold harmless each other Owner from all claims arising from the use of the easements hereby created to serve its parcel. Each Owner agrees to maintain policies of liability insurance issued by reputable companies in amounts and on policy terms customary for the improvements of such Owner. To the maximum extent that the same is permitted under policies of insurance in force, each Owner releases each other Owner from all liability for any loss or damage of the type provided by such coverage insurance, and grants to each other Owner, on behalf of any insurer providing such insurance, a waiver of any right of subrogation which any insurer of any Owner might acquire against any other Owner by virtue of payment of any loss covered by such insurance.

4. Nothing contained in this Declaration will be deemed to constitute a gift, grant or dedication of any portion of the Easement Property to the general public or for any public purpose whatsoever, it being the intention of the Declarant that the rights and benefits created by this Declaration will be strictly limited to the private use of the Owners and their invitees. This Declaration is intended to benefit the Owners and their respective successors, assigns and mortgagees and is not intended to constitute any person which is not an Owner, a third party beneficiary hereunder or to give any such person any rights hereunder

5. If any Owner institutes any action or proceeding against another Owner relating to the provisions of this Declaration or any default hereunder, the unsuccessful Owner in such action or proceeding will reimburse the successful Owner therein for the reasonable expenses of attorneys' fees and disbursements incurred by the successful Owner.

6. If any provision of this Declaration is, to any extent, declared by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Declaration (or the application of such provision to persons or circumstances other than those in respect of which the determination of invalidity or unenforceability was made) will not be affected thereby and each provision of this Declaration will be valid and enforceable to the fullest extent permitted by law.

**IN WITNESS WHEREOF**, Declarant has caused this Declaration to be executed as of the day and year first above written.

**DECLARANT:**

**SHELBY COMMERCE PARK LLC**

By: H. Michael Graham

H. Michael Graham  
Authorized Member

STATE OF ALABAMA )

:

JEFFERSON COUNTY )

I, the undersigned, a notary public in and for said county in said state, hereby certify that H. Michael Graham, whose name as authorized member of Shelby Commerce Park LLC, 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.

Given under my hand and official seal this 2nd day of April, 2002.

[Signature]

Notary Public

[NOTARIAL SEAL]

My commission expires: 9-19-02



## CONSENT OF MORTGAGEE

**THIS CONSENT OF MORTGAGEE** (this "Consent") is made and entered into as of the 2nd day of April, 2002, by COMPASS BANK ("Mortgagee").

### RECITALS:

A. Mortgagee is the holder of that certain Mortgage and Security Agreement dated as of December 4, 2000 (the "Mortgage") executed by Shelby Commerce Park LLC ("Mortgagor"), in favor of Mortgagee, which has been recorded as Instrument #2000-41657 in the Office of the Judge of Probate of Shelby County, Alabama. The Mortgage encumbers Parcel 1 and Parcel 2, as described in the Declaration of Easement (as defined below).

B. Contemporaneously herewith, Mortgagor has executed the Declaration of Easement (the "Declaration of Easement"), to which this Consent is attached. *Capitalized terms not otherwise expressly defined herein shall have the same meanings given to them in the Declaration of Easement.*

C. Mortgagee desires to consent to the execution of the Declaration of Easement by Mortgagor and to acknowledge and agree that the rights and interests of Mortgagee under the Mortgage are subject and subordinate to the rights and interests created in the Declaration of Easement.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagee does hereby covenant and agree as follows:

1. Mortgagee does hereby consent to the execution of the Declaration of Easement.

2. Mortgagee does hereby agree that, upon and after a foreclosure of the Mortgage, the granting of any deed in lieu of foreclosure or the taking of any other action by Mortgagee under the Mortgage which results in Mortgagee acquiring title to or any interest in Parcel 1 or Parcel 2 (collectively, a "Foreclosure Action"), then (a) the Declaration of Easement and the easements created therein in favor of Parcel 1 and Parcel 2 shall not be affected or disturbed by virtue of such Foreclosure Action, but shall continue in full force and effect, (b) the then owners of Parcel 1 and Parcel 2 and such owner's heirs, executors, administrators, personal representatives, successors and assigns, shall continue to have the right to enjoy all of the rights and privileges set forth in the Declaration of Easement without any interference by any person claiming by, through or under Mortgagee, (c) Mortgagee or any purchaser at foreclosure, as applicable, shall be bound by all of the terms and provisions of the Declaration of Easement; provided, however, that in no event shall Mortgagee be bound by any amendments or modifications to the Declaration of Easement not consented to in writing by Mortgagee, and (d) Mortgagee shall execute any documents or instruments reasonably requested by any Owner of Parcel 1 or Parcel 2 to confirm that all of the terms and provisions of the Declaration of Easement shall continue in full force and effect following any such Foreclosure Action.

3. The covenants and agreements set forth herein shall be binding upon and inure to the benefit of Mortgagor and Mortgagee and their respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, Mortgagee has executed this Consent as of the 3rd day of April, 2002.

**COMPASS BANK**

By: [Signature]  
Its: S.V.P.

STATE OF ALABAMA     )  
                                      :  
COUNTY OF JEFFERSON )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that R. Scott Pulliam, whose name as S.V.P. of COMPASS 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 the 3rd day of April, 2002.

[Signature]  
NOTARY PUBLIC  
My Commission Expires: 9-19-02

## **EXHIBIT A**

### **LEGAL DESCRIPTION OF PARCEL 1**

A parcel of land located in a portion of the SW  $\frac{1}{4}$  of Section 28, a portion of the NW  $\frac{1}{4}$  of the NW  $\frac{1}{4}$  of Section 33, a portion of the NE  $\frac{1}{4}$  of the NE  $\frac{1}{4}$  of Section 32 and a portion of the SE  $\frac{1}{4}$  of Section 29, Township 21 South, Range 2 West of Shelby County, Alabama, more particularly described as follows:

Commence at the NW corner of Section 28, said corner being a 1½ inch pipe monument; thence South 00 deg. 01 min. 41 sec. West at a distance of 3750.39 feet to a point on the West line of Section 28, marked with a 1½ inch pipe with disk cap, said point being the point of beginning of the hereinafter described parcel; thence South 88 deg. 17 min. 43 sec. East at a distance of 878.20 feet to the Westerly right-of-way of Highway No. 31, marked with a 5/8" rebar; thence South 09 deg. 11 min. 51 sec. East at a distance of 194.81 feet along the West right of way of Highway No. 31, marked with a 5/8" rebar; thence South 09 deg. 11 min. 51 sec. East at a distance of 7.81 feet continuing along the West right of way of Highway No. 31, marked by a 5/8" rebar; thence North 82 deg. 45 min. 42 sec. East at a distance of 15.04 feet marked by a 5/8" rebar; thence South 07 deg. 17 min. 27 sec. East at a distance of 100.07 feet, continuing along the West right of way of Highway No. 31, marked by a 5/8" rebar; thence South 82 deg. 45 min. 28 sec. West at a distance of 15.00 feet continuing along right of way of Highway No. 31, marked with a 5/8" rebar; thence South 07 deg. 11 min. 56 sec. East at a distance of 386.09 feet continue along the West right of way of Highway No. 31 to a point of tangent, marked by a 5/8" rebar; thence South 13 deg. 34 min. 34 sec. East with a delta angle of 12 deg. 45 min. 17 sec., radius of 2822.48 feet, tangent of 315.46 feet and an arc length of 628.31 feet at a distance of 627.02 feet chord, thus a point of curvature which adjoins the Westerly right of way of Highway No. 31; thence South 19 deg. 57 min. 12 sec. East at a distance of 336.41 feet, continuing along the West right of way line Highway No. 31, marked by 5/8" rebar; thence South 19 deg. 47 min. 25 sec. East a distance of 781.95 feet to the Southeast corner of property marked by a 5/8" rebar; thence South 70 deg. 32 min. 30 sec. West at a distance of 1063.06 feet attached to a non-exclusive license agreement for right of way of a 100 foot strip of land, thus being 50 feet on each side of centerline of survey recorded in Map Book 340, page 702 Shelby County, Alabama Probate Office adjacent to Oak Tree Lane (dirt road), marked by an iron per deed called West property line; thence North 15 deg. 19 min. 16 sec. West at a distance of 588.05 feet, marked by a 3/4" steel pin; thence South 72 deg. 12 min. 50 sec. West at a distance of 258.03 feet, marked by a hub and tack fence corner; thence North 22 deg. 57 min. 44 sec. West at a distance of 918.39 feet, marked by an angle iron; thence South 61 deg. 32 min. 11 sec. West at a distance of 222.72 feet, marked by a 5/8" rebar; thence North 24 deg. 52 min. 57 sec. West at a distance of 1651.73 feet running adjacent to L&N Railroad, marked by a 5/8" rebar; thence South 89 deg. 50 min. 18 sec. East at a distance of 1154.58 feet to the point of beginning being situated in Shelby County, Alabama.

Less and except the property described on Schedule I attached.



# SCHEDULE I

A parcel of land located in the E ½ of the SE ¼ of Section 29 and the W ½ of the SW ¼ of Section 28; Township 21 South Range 2 West; Shelby County, Alabama, being more particularly described as follows:

Commence at the NW corner of said Section 28, Township 21 South, Range 2 West; thence run S00°01'41"W along the west line thereof for a distance of 3750.39' to the Point of Beginning; thence S88°21'33"E a distance of 878.08' to a point of the westerly right of way of U.S. Highway No. 31, THE FOLLOWING CALLS ARE ALONG SAID RIGHT OF WAY; thence S09°18'35"E a distance of 202.84'; thence N82°18'50"E a distance of 14.90'; thence S07°20'25"E a distance of 100.01'; thence S82°39'00"W a distance of 14.98; thence S07°11'56"E a distance of 358.29' to the beginning of a curve tangent to said line, said point also a point on the northerly line of a 60.0' wide easement to serve this and other parcels; thence leaving said right of way, southerly, southwesterly and westerly a distance of 213.90' along the curve concave to the northwest, having a radius of 125.00' and a central angle of 98°02'42"; thence N89°09'14"W tangent to said curve, a distance of 1624.74'; thence N24°52'57"W a distance of 880.61'; thence S89°53'05"E a distance of 1152.83' to the Point of Beginning.

Containing 34.95 ACRES, more or less.

## **EXHIBIT B**

### **LEGAL DESCRIPTION OF PARCEL 2**

A parcel of land located in the E ½ of the SE ¼ of Section 29 and the W ½ of the SW ¼ of Section 28; Township 21 South Range 2 West; Shelby County, Alabama, being more particularly described as follows:

Commence at the NW corner of said Section 28, Township 21 South, Range 2 West; thence run S00°01'41"W along the west line thereof for a distance of 3750.39' to the Point of Beginning; thence S88°21'33"E a distance of 878.08' to a point of the westerly right of way of U.S. Highway No. 31, THE FOLLOWING CALLS ARE ALONG SAID RIGHT OF WAY; thence S09°18'35"E a distance of 202.84'; thence N82°18'50"E a distance of 14.90'; thence S07°20'25"E a distance of 100.01'; thence S82°39'00"W a distance of 14.98; thence S07°11'56"E a distance of 358.29' to the beginning of a curve tangent to said line, said point also a point on the northerly line of a 60.0' wide easement to serve this and other parcels; thence leaving said right of way, southerly, southwesterly and westerly a distance of 213.90' along the curve concave to the northwest, having a radius of 125.00' and a central angle of 98°02'42"; thence N89°09'14"W tangent to said curve, a distance of 1624.74'; thence N24°52'57"W a distance of 880.61'; thence S89°53'05"E a distance of 1152.83' to the Point of Beginning.

Containing 34.95 ACRES, more or less.



## EXHIBIT C

### LEGAL DESCRIPTION OF EASEMENT PROPERTY

A 60.0' wide easement with turn in radii at Highway No. 31 more particularly described as follows:

Commence at the NW corner of said Section 28, Township 21 South, Range 2 West; Thence run S00°01'41"W along the west line thereof for a distance of 3750.39' to the Point of Beginning; thence S88°21'33"E a distance of 878.08' to a point of the westerly right of way of U.S. Highway No. 31; thence S09°18'35"E along said right of way for a distance of 202.84'; thence N82°18'50"E a distance of 14.90' ; thence S07°20'25"E a distance of 100.01'; thence S82°39'00"W a distance of 14.98'; thence S07°11'56"E a distance of 358.29' TO THE POINT OF BEGINNING; said point being the point of beginning of a curve to the right from which the radius point bears S82°48'04"W southerly, southwesterly and westerly a distance of 213.90' along the curve concave to the northwest, having a radius of 125.00' and a central angle of 98°02'42"; thence N89°09'14"W tangent to said curve, a distance of 1624.74' to the property line of the grantor; thence S24°52'57"E a distance along said property line of 66.60'; thence S89°09'14"E a distance of 1639.64' to the beginning of a curve tangent to said line; thence easterly, southeasterly and southerly a distance of 178.80' along the curve concave to the southwest, having a radius of 125.00' and a central angle of 81°57'18" to a point of cusp, said point being on the westerly right of way line of U.S. Highway No. 31; thence N07°11'56"W a distance along said right of way of 313.08' to the Point of Beginning.

Containing 2.58 ACRES, more or less.

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