

THIS INSTRUMENT PREPARED BY:

William M. Phillips, Jr., Esq.

Lange, Simpson, Robinson & Somerville LLP

2100 3rd Avenue North, Suite 1100

Birmingham, Alabama 35203

DECLARATION OF RECIPROCAL EASEMENTS

THIS DECLARATION OF RECIPROCAL EASEMENTS (the "**Declaration**") is made and executed by **DEVELOPMENT – 119, LLC**, an Alabama limited liability company (the "**Developer**"), this 10th day of October, 2002.

WITNESSETH:

WHEREAS, Developer is the owner of certain real property located in the City of Hoover, Shelby County, Alabama, and has subdivided such real property into the lots particularly described in Exhibit A attached hereto and made a part hereof (collectively, and as the same may be further subdivided or resurveyed, the "**Lots**") pursuant to that certain Resurvey of Lot 2 of John Bell's Addition to Hoover, recorded in Map Book 29, Page 86, in the Office of the Judge of Probate of Shelby County, Alabama; and

WHEREAS, for the mutual benefit of the Lots and to facilitate the use and further improvement of the Lots as a commercial development, and in order to satisfy the requirements of the City of Hoover, Alabama (the "**City**"), as to parking and access to the effect that the parking and access areas of each Lot shall serve all of the Lots collectively, Developer desires to subject the Lots to the terms and provisions of this Declaration;

NOW, THEREFORE, Developer does hereby declare that all of the Lots shall be held, developed, improved, transferred, sold, conveyed, leased, occupied and used subject to the following easements, covenants, conditions, restrictions, and provisions, which shall be binding upon and inure to the benefit of all parties acquiring or having any right, title or interest in the Lots, or any of them, and their respective heirs, executors, administrators, personal representatives, successors and assigns. As used in this Declaration, the term "**Owner**" shall mean and refer to the record owner, including Developer, of fee simple title to any Lot but shall not include (i) any mortgagee unless and until such mortgagee has foreclosed on its mortgage and purchased such Lot at the foreclosure sale held with respect to the foreclosure of such mortgage or (ii) any lessee, purchaser, contract purchaser or vendor who has an interest in any Lot solely by virtue of a lease, contract, installment contract or other agreement.

1. Easements. Developer hereby establishes for the mutual benefit and burden of the Lots, and for the mutual, reasonable use and enjoyment by the respective Owners of the Lots, and their respective tenants, subtenants, employees, agents, licensees, invitees, occupants, heirs, executors, administrators, personal representatives, successors and assigns, and the agents, employees, licensees and invitees of their respective tenants and subtenants, non-exclusive, perpetual, reciprocal, and mutual cross-easements:

- (a) for vehicular parking, and for vehicular and pedestrian traffic incidental to

vehicular parking, upon, over and across any and all areas improved or designated, or to be improved or designated, for vehicular parking in or upon the Lots, or any of them (the “**Parking Areas**”);

- (b) for pedestrian traffic upon, over and across any and all sidewalks and other areas improved or designated, or to be improved or designated, for pedestrian traffic or for pedestrian entrance, access, ingress and/or egress in, to, from, or upon the Lots, or any of them (the “**Sidewalks**”); and
- (c) for vehicular traffic upon, over and across any and all areas improved or designated, or to be improved or designated, as entranceways or driveways or otherwise for vehicular entrance, access, ingress and/or egress in, to, from, or upon the Lots, or any of them (the “**Driveways**”, together with the Parking Areas and the Sidewalks, the “**Easement Areas**”).

2. Maintenance. Each Lot Owner, at such Owner’s expense and in compliance with all applicable laws and governmental regulations, shall maintain and keep in good repair the Easement Areas located upon such Owner’s Lot(s). Such maintenance and repair obligation shall include (but shall not necessarily be limited to) maintaining paved surfaces of the Parking Areas and the Driveways in a good condition, restriping the Parking Areas as necessary, maintaining the Sidewalks in a clean and orderly condition, and keeping the Easement Areas free of snow, ice, rubbish, and obstructions of every nature that impair the use and enjoyment of the Easement Areas (except as reasonably necessary for repair or maintenance). No maintenance or repair activity undertaken hereunder by any Lot Owner shall constitute a waiver by such Lot Owner of any claims, rights, or remedies, if any, available to such Lot Owner as a result of any act which gives rise to the need for maintenance or repair. Once improved or established as an Easement Area, no Easement Area shall be reconfigured, moved, or discontinued as an Easement Area without the prior written consent of all Owners of all Lots, which consent shall not be unreasonably withheld or delayed, and without the consent and approval of the City in the event that such consent and approval is required by applicable law or governmental regulation.

3. Indemnification. Each Lot Owner (as the context may require, an “**Indemnifying Lot Owner**”) shall indemnify, defend and hold harmless the other Lot Owners (as the context may require, the “**Indemnified Lot Owners**”) from and against any and all losses, judgments, costs, claims, liabilities, damages and expenses (including, without limitation, reasonable attorneys’ fees and court costs) (collectively, “**Losses**”) incurred or suffered by the Indemnified Lot Owners, or any of them, and arising out of or resulting from injuries to persons (including, without limitation death) or property occurring in or upon the Lot(s) owned by the Indemnifying Lot Owner. An Indemnifying Lot Owner’s obligations to any Indemnified Lot Owner under this section shall not apply to the extent that any Loss or Losses suffered by such Indemnified Lot Owner result from the negligence or intentionally wrongful conduct of such Indemnified Lot Owner, its agents, employees, servants, or contractors, or from the breach by such Indemnified Lot Owner of its obligations and responsibilities under this Declaration. In order to insure against claims for injuries to persons (including, without limitation, death) and/or property occurring in, on or about the Lots, each Lot Owner at all times shall maintain with respect such Owner’s Lot(s) public liability insurance in a commercially reasonable amount and with a solvent and responsible insurer licensed

to do business in the State of Alabama. Each Lot Owner shall furnish a certificate evidencing such insurance within ten (10) days after any other Lot Owner's request therefor.

4. Duration. The terms and provisions of this Declaration shall be permanent and perpetual, shall run with the land hereby affected, and shall be binding upon and inure to the benefit of the Lot Owners and their respective heirs, executors, administrators, personal representatives, successors and assigns; provided, that all Lot Owners, after first receiving the consent and approval of the City, to the extent such consent and approval are required by applicable law or governmental regulation, may at any time terminate this Declaration by unanimously joining in the execution of and recording an instrument to such effect.

5. Remedies. In the event of any breach of the provisions of this Declaration, the aggrieved party or parties shall be entitled to exercise any and all rights and remedies available at law or in equity, including, without limitation, the remedies of injunction and/or specific performance, the recovery of damages, and/or any and all other rights and remedies available for breach or violation regarding a covenant running with the land or an equitable servitude. Available rights and remedies shall be cumulative and concurrent and may be exercised by the aggrieved party in such order and in such manner as the aggrieved party may determine in its sole and absolute discretion. The exercise of any right or remedy shall not preclude the exercise of any other rights or remedies. In the event litigation is commenced to enforce the provisions of this Declaration, the prevailing party or parties shall be entitled to recover from the party or parties not prevailing, in addition to all other costs and damages awarded, reasonable attorneys' fees and court costs, including, without limitation, those incurred at trial, in arbitration or upon any appeal.

6. Private Property; No Third Party Beneficiaries. The Lots and the Easement Areas are and shall remain the private property of the Lot Owners according to their respective interests therein, and nothing in this Declaration shall be construed to create, grant or dedicate any public rights, privileges, licenses, or easements in the Easement Areas or in any of the Lots. This Declaration contemplates no third party beneficiaries and is not intended and shall not be construed to confer any rights or remedies upon any person except as expressly provided herein. No persons or entities, other than Lot Owners, shall have the right to enforce any of the provisions of this Declaration or the right to consent to or approve any amendment or modification to this Declaration (except, to the extent required by applicable law or governmental regulation, the City).

7. Assignment. To the extent that Developer has specifically reserved to itself any rights, powers, reservations, or duties in this Declaration ("**Developer Powers**"), Developer, and its successors and assigns, shall have the right to assign any or all of such Developer Powers to any person by executing an instrument memorializing the assignment and making specific reference to this Declaration. Notwithstanding anything provided herein to the contrary, no sale, transfer, conveyance, lease, pledge, encumbrance or other hypothecation of any Lot by Developer to a third party shall constitute or be deemed to constitute a transfer of any Developer Powers unless express reference is made in such instrument of conveyance to this Declaration and to the Developer Powers so transferred. Upon the transfer and assignment of any Developer Powers to any person, the assignor shall and forever will be fully and completely released and

discharged from any future obligations with respect to such Developer Powers arising after the date of such assignment, and the assignee thereof shall assume all such obligations of Developer hereunder. Otherwise, the easements, rights, benefits and burdens provided in this Declaration are appurtenant to the land hereby affected and the use and occupancy thereof, are not personal to any person, and may not be assigned in gross or otherwise severed or alienated from the land and the use and occupancy thereof; provided, however, that any obligation on the part of a Lot Owner which shall accrue, become due, or become owing at the time of ownership of any Lot by such Owner (including, without limitation, any obligation arising under Section 3 of this Declaration as a result of any event or occurrence happening during an Indemnifying Owner's ownership of a Lot) shall, in addition to being a charge upon the Owner's Lot, be the personal obligation of such Owner and shall survive as such Owner's personal obligation after the Owner's conveyance of such Lot if the same shall not be satisfied prior to such conveyance.

8. Waiver. No provision of this Declaration shall be deemed to have been waived unless such waiver is in writing and is signed by the party waiving such provision, and any such waiver shall be effective only for the specific purpose for which it is given and in the specific instance in which given. The failure of any party to seek redress for violation of, or to insist upon the strict performance of, any covenant or condition of this Declaration in any instance shall not be construed as a waiver or relinquishment for the future performance of such covenant or condition, and such covenant or condition shall continue and remain in full force and effect with respect to any subsequent breach, act or omission.

9. Modification and Amendment. This Declaration shall not be modified or amended in any respect except by a written instrument executed unanimously by all Lot Owners and recorded in the Office of the Judge of Probate of Shelby County, Alabama; provided, that for as long as Developer shall be the Owner of any Lot, Developer may, in its sole discretion, and notwithstanding any provision to the contrary in this Declaration, amend this Declaration without any obligation or requirement to obtain the consent or approval of any other Lot Owner to such amendment; provided further, that no modification or amendment shall be effected without the prior consent and approval of the city council of the City by resolution, in the event that such consent and approval is required by applicable law or governmental regulation.

10. Construction. The terms and provisions of this Declaration shall be construed in a fair and impartial manner, and there shall be no presumption or standard of construction in favor of or against any party in the construction and interpretation of this Declaration.

11. Captions and Headings. The captions and headings contained in this Declaration are for convenience of reference only and shall not be used to limit the applicability or meaning of any provisions of this Declaration.

12. Pronouns and Plurals. All personal pronouns used in this Declaration, whether used in the masculine, feminine or neuter gender, shall include all other genders where the context so requires. The use of the singular form shall include the plural and the use of the plural shall include the singular where the context so requires.

13. Severability. If any provision of this Declaration or the application thereof to any

person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Declaration or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each provision shall be valid and enforceable to the fullest extent permitted by law.

14. Governing Law. This Declaration shall governed by and construed in accordance with the laws of the State of Alabama without regard to its conflict of laws principles.

IN WITNESS WHEREOF, Developer has caused this Declaration to be executed under seal by its duly authorized representative as of the date first above written.

DEVELOPMENT – 119, LLC

By: _____


John E. Bell, Jr.

Its Managing Member

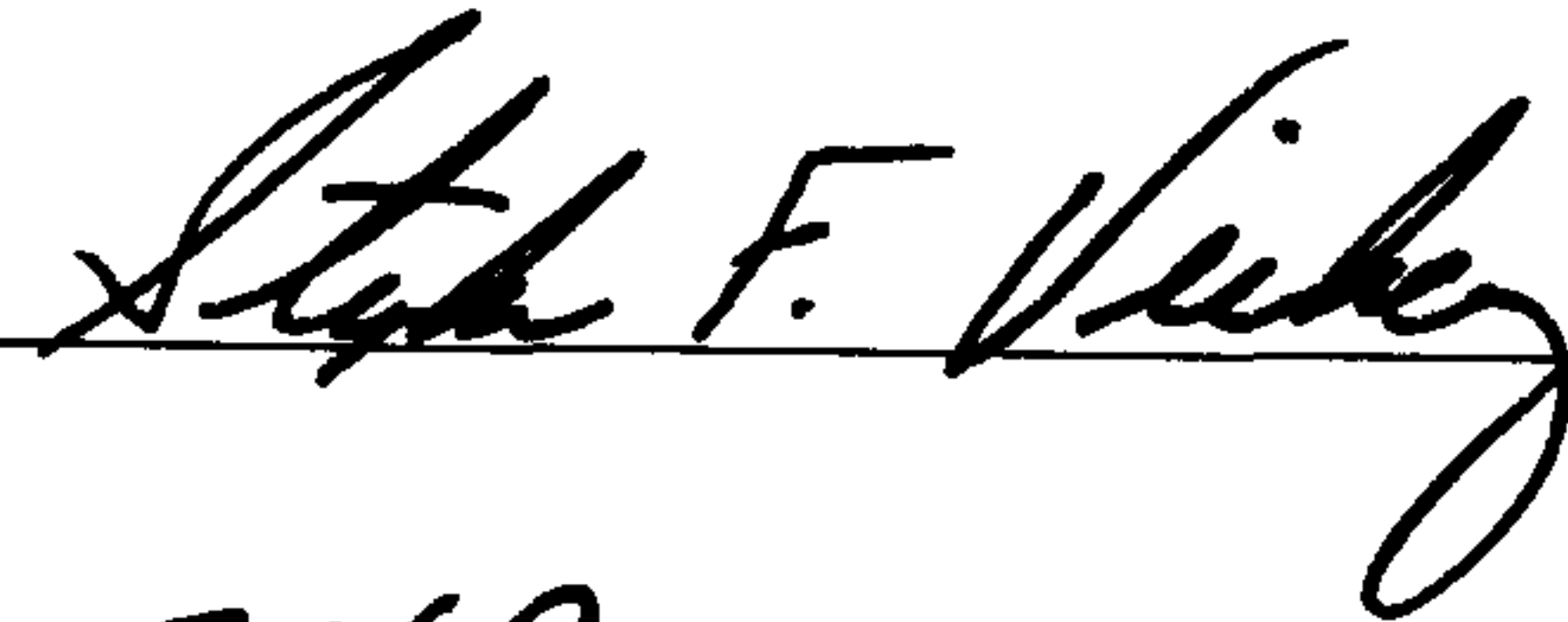
[SEAL]

CONSENT OF MORTGAGEE

National Bank of Commerce of Birmingham, a national banking association, mortgagee under that certain Future Advance Mortgage, dated December 21, 2000, recorded as Instrument 2000-45271 in the Office of the Judge of Probate of Shelby County, Alabama, covering the real property comprising the Lots, hereby acknowledges and consents to the execution and recordation of the foregoing Declaration.

NATIONAL BANK OF COMMERCE OF
BIRMINGHAM

By: _____



Its: _____



STATE OF ALABAMA)

COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that John E. Bell, Jr., whose name as Managing Member of DEVELOPMENT – 119, 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 representative and with full authority, executed the same for and as the act of said limited liability company.

Given under my hand and official seal, this the 10th day of October, 2002.

Wm M. Phillips
Notary Public

My commission expires: 12-2-05

STATE OF ALABAMA)

COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Stephen F. Vickery, 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 for and as the act of said national banking association.

Given under my hand and official seal, this the 23rd day of September, 2002.

Blenda G. Usher
Notary Public

My commission expires: My Commission Expires 8-11-2003

EXHIBIT A

(the Lots)

Lot 2A according to Resurvey of Lot 2 of John Bell's Addition to Hoover, as recorded in Map Book 29, Page 86, in the Office of the Judge of Probate of Shelby County, Alabama.

Lot 2B according to Resurvey of Lot 2 of John Bell's Addition to Hoover, as recorded in Map Book 29, Page 86, in the Office of the Judge of Probate of Shelby County, Alabama.