


5008



20050902000453650 1/9 \$35.50  
Shelby Cnty Judge of Probate, AL  
09/02/2005 08:13:49AM FILED/CERT

This instrument was prepared by:

M. Beth O'Neill  
MAYNARD, COOPER & GALE, P.C.  
1901 Sixth Avenue North  
2400 AmSouth/Harbert Plaza  
Birmingham, Alabama 35203-2602  
(205) 254-1000

STATE OF ALABAMA                    )  
SHELBY COUNTY                        )

### **FIRST AMENDMENT TO RECIPROCAL EASEMENT AGREEMENT**

This First Amendment to Reciprocal Easement Agreement ("Amendment"), is made and entered into as of August 31, 2005, by and between Mirage Properties, L.L.C., an Alabama limited liability company ("Mirage"), SportsFirst, Inc., an Alabama corporation ("SportsFirst"), and AmSouth Bank, an Alabama banking corporation ("AmSouth" and collectively with Mirage and SportsFirst, the "Parties").

#### **Recitals**

A. Mirage and SportsFirst entered into a certain Reciprocal Easement Agreement dated March 4, 2003 and recorded in the Office of the Judge of Probate of Shelby County, Alabama as Instrument # 20030307000141400 (the "Easement Agreement"). Unless otherwise defined in this Amendment, capitalized terms shall have the meaning assigned to them in the Easement Agreement.

B. Pursuant to the Easement Agreement, Mirage, as the owner of the Burdened Property, granted to SportsFirst, as the owner of the Grantee's Parcel, a non-exclusive permanent easement for the sole purpose of pedestrian and vehicular ingress and egress in order to use a total of 15 parking spaces located on the Easement Parcel in the specific locations reflected on Exhibit C attached to the Easement Agreement, and limited to the hours and days of use as set forth in the Easement Agreement.

C. Mirage entered into a Ground Lease Agreement with AmSouth dated February 20, 2004 ("Ground Lease"), a Memorandum of which is recorded in the Office of the Judge of Probate of Shelby County, Alabama as Instrument #20040827000480280, pursuant to which Mirage demised to AmSouth the Burdened Property.

D. Pursuant to Section 7 of the Easement Agreement, Mirage has the right to terminate the Easement Agreement if the Grantee's Parcel is conveyed to a party other than Mirage or Baptist Health System, Inc.



E. SportsFirst proposes to sell the Grantee's Parcel to The Young Men's Christian Association of Birmingham ("YMCA") for use as a sports/fitness club, and the Parties wish to amend the Easement Agreement expressly to allow the sale to the YMCA without triggering Mirage's right to terminate the Easement Agreement.

### Agreement

NOW, THEREFORE, in consideration of the foregoing Recitals and of the mutual agreement of the parties hereto, the Parties hereby agree as follows:

1. The defined terms set forth in the Recitals of this Amendment are hereby incorporated into the Agreement for all relevant purposes.

2. Section 7 of the Easement Agreement is hereby deleted and the following is substituted in lieu thereof:

7. Duration of Easement: Subject to subsection (b) below, (a) the parking easement granted herein and the rights of pedestrian and vehicular entry to ingress and egress for the sole purpose of parking shall be perpetual in duration and shall, both as to the benefits and burdens thereof, run with the Grantee's Parcel as appurtenances thereto and the Burdened Property as encumbrances thereto; however, and (b) notwithstanding the foregoing, Grantor, its successors or assigns, including, without limitation, AmSouth, so long as the Ground Lease is in effect, shall have the right to terminate the parking easement granted herein if the Grantee's Parcel (i) ceases to be used as a sports/fitness club or similar establishment, or (ii) is conveyed to a party other than Grantee, BHS or The Young Men's Christian Association of Birmingham ("YMCA"). In the event Grantor, its successors or assigns, including, without limitation, AmSouth, so long as the Ground Lease is in effect, elects to terminate this parking easement in accordance with the contingencies herein provided, then the entire parking easement in this agreement shall terminate upon the filing by Grantor, its successors or assigns, including, without limitation, AmSouth, so long as the Ground Lease is in effect, of a Termination of Easement in the Probate Office of Shelby County, Alabama, which document shall not have to be signed or joined by Grantee, YMCA or their respective purchasers in order to make the same effective.

3. Except as hereby expressly modified and amended in this Amendment, the Easement Agreement shall otherwise remain in full force and effect in accordance with its terms.

4. The parties acknowledge that AmSouth has notified Mirage, SportsFirst and YMCA that AmSouth intends to relocate the parking easement from its current location, and will effectuate such relocation pursuant to the terms of the Easement Agreement.



20050902000453650 4/9 \$35.50  
Shelby Cnty Judge of Probate, AL  
09/02/2005 08:13:49AM FILED/CERT

IN WITNESS WHEREOF, each of the undersigned has executed or caused this instrument to be executed in its name and on its behalf by its officers or member thereunto duly authorized, all as of the date first above written.

**MIRAGE PROPERTIES, L.L.C.**

By: 

Name: Steve Issis

Title: Member

**SPORTSFIRST, INC.**

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

Name: Douglas C. Davenport

Title: President

**AMSOUTH BANK**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_



IN WITNESS WHEREOF, each of the undersigned has executed or caused this instrument to be executed in its name and on its behalf by its officers or member thereunto duly authorized, all as of the date first above written.

~~MIRAGE PROPERTIES, L.L.C.~~

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

~~Name: \_\_\_\_\_~~

~~Title: \_\_\_\_\_~~

SPORTSFIRST, INC.

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

Name: Douglas C. Davenport

Title: President

~~AMSOUTH BANK~~

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

~~Name: \_\_\_\_\_~~

~~Title: \_\_\_\_\_~~



20050902000453650 6/9 \$35.50  
Shelby Cnty Judge of Probate, AL  
09/02/2005 08:13:49AM FILED/CERT

IN WITNESS WHEREOF, each of the undersigned has executed or caused this instrument to be executed in its name and on its behalf by its officers or member thereunto duly authorized, all as of the date first above written.

**MIRAGE PROPERTIES, L.L.C.**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SPORTSFIRST, INC.**

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

Name: Douglas C. Davenport

Title: President

**AMSOUTH BANK**

By: Emilio M. Cerice

Name: Emilio M. Cerice

Title: Vice President

20050902000453650 7/9 \$35.50  
Shelby Cnty Judge of Probate, AL  
09/02/2005 08:13:49AM FILED/CERT

STATE OF ALABAMA )  
COUNTY OF Shelby )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Steve Issis, whose name as Member, of Mirage 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 the foregoing instrument, he, as such Member and with full authority, executed the same voluntarily on the date hereof, for and as the act of said limited liability company.

Given under my hand and official seal, this 31st day of August, 2005.

Sta. Marie, D.  
Notary Public

[AFFIX SEAL]

My Commission Expires: 12-08-05

STATE OF ALABAMA )  
COUNTY OF JEFFERSON )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Douglas C. Davenport, whose name as President of SportsFirst, Inc., an Alabama 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 the foregoing instrument, he, as such officer and with full authority, executed the same voluntarily on the date hereof, for and as the act of said corporation.

Given under my hand and official seal, this \_\_\_\_\_ day of August, 2005.

\_\_\_\_\_  
Notary Public

[AFFIX SEAL]

My Commission Expires: \_\_\_\_\_





20050902000453650 8/9 \$35.50  
Shelby Cnty Judge of Probate, AL  
09/02/2005 08:13:49AM FILED/CERT

STATE OF ALABAMA )  
COUNTY OF \_\_\_\_\_ )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that \_\_\_\_\_, whose name as \_\_\_\_\_, of Mirage 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 the foregoing instrument, he, as such \_\_\_\_\_ and with full authority, executed the same voluntarily on the date hereof, for and as the act of said limited liability company.

Given under my hand and official seal, this \_\_\_\_\_ day of August, 2005.

\_\_\_\_\_  
Notary Public

[AFFIX SEAL]

My Commission Expires: \_\_\_\_\_

STATE OF ALABAMA )  
COUNTY OF JEFFERSON )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Douglas C. Davenport, whose name as President of SportsFirst, Inc., an Alabama 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 the foregoing instrument, he, as such officer and with full authority, executed the same voluntarily on the date hereof, for and as the act of said corporation.

Given under my hand and official seal, this 31<sup>st</sup> day of August, 2005.

Douglas H. Dye  
Notary Public

[AFFIX SEAL]

My Commission Expires: 3-12-07





20050902000453650 9/9 \$35.50  
Shelby Cnty Judge of Probate, AL  
09/02/2005 08:13:49AM FILED/CERT

STATE OF ALABAMA )  
COUNTY OF JEFFERSON )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Emilio M. Cene, whose name as Vice President of AmSouth 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 the foregoing instrument, he, as such officer and with full authority, executed the same voluntarily on the date hereof, for and as the act of said corporation.

Given under my hand and official seal, this 30th day of August, 2005.

LaTashia Monique Clay  
Notary Public

[AFFIX SEAL]

My Commission Expires: 2-18-08



LaTashia Monique Clay  
Bond No. 68946943N  
Notary Public for the State of Alabama  
Commission Expires: February 18, 2008