

STATE OF ALABAMA                     )  
   :  
SHELBY COUNTY                     )

**RESTRICTIVE COVENANT  
AND MAINTENANCE AGREEMENT**

**THIS RESTRICTIVE COVENANT AND MAINTENANCE AGREEMENT** (the "Declaration") is entered into this 20 day of July, 2007, by **SCP NEW, LLC**, an Alabama limited liability Company ("SCP New"), **CALERA 3280, LLC**, an Alabama limited liability company ("Calera"), **DIXON ONE, LLC**, an Alabama limited liability company ("Dixon One"), **O'BRIEN ONE, LLC**, an Alabama limited liability company ("O'Brien One") and **SCP BUILDING 4, LLC**, a Alabama limited liability company ("SCP 4").

**RECITALS:**

A. Calera is the owner of Lot 1, Shelby Commerce Park, Map Book 31, Page 138, Shelby County Probate Office ("Lot 1").

B. SCP New is the owner of Lot 2A ("Lot 2A") and Lot 2B ("Lot 2B"), Graham's Resurvey of Lot 2, Shelby Commerce Park as recorded in Map Book 35, Page 18, Shelby County Probate Office.

C. Dixon One, SCP 4 and O'Brien One are the owners of Lot 2C ("Lot 2C"), Graham's Resurvey of Lot 2, Shelby Commerce Park as recorded in Map Book 35, Page 18, Shelby County Probate Office.

D. SCP New, Calera, Dixon One, O'Brien One and SCP 4 have determined that it is necessary and appropriate to create, grant and reserve certain, rights and requirements with respect to maintenance, signage, parking and other matters with respect to the lots referred to above (individually, a "Parcel" and collectively, the "Parcels") for the use and benefit of the owners of each of the Parcels, and their respective successors and assigns (each an "Owner" and collectively, the "Owners"), and the respective agents, customers, patrons, guests, invitees, licensees, employees, servants, contractors, mortgagees and tenants of the Owners.

**NOW, THEREFORE**, SCP New, Calera, Dixon One, O'Brien One and SCP 4 hereby declare that each Parcel shall be benefited and burdened by the following restrictions and rights.

**Section 1. Maintenance of Parcels.** Each Owner shall be responsible for maintaining their respective Parcel at their own expense in a good state of repair. Any unimproved area shall be mowed and kept litter-free. The minimum standard of maintenance for the improvements on a Parcel shall be comparable to the standard of maintenance followed in other first class warehouse developments of comparable size in the Birmingham, Alabama metropolitan area. Such operation, maintenance and repair obligation shall include but not be limited to the following:



- (a) Maintaining all paved surfaces and curbs in a smooth and evenly covered condition, including, resurfacing and, when necessary to restripe the parking and driveway areas;
- (b) Regularly removing papers, debris, filth, and refuse, to the extent necessary to keep the Parcel in a first-class, clean and orderly condition, including, without limitation, the areas surrounding any dumpsters;
- (c) Maintaining, cleaning, replacing and updating any tenant directory, directional, stop or handicapped parking signs or markers;
- (d) Maintaining, cleaning and replacing lighting illuminating the Parcel;
- (e) Maintaining and replacing all fencing, landscape plantings, trees and shrubs; and
- (f) Maintaining the exterior of any buildings or other improvements on a Parcel in good, sightly condition, without peeling paint, mildewed walls or other deteriorating condition.

**Section 2.** Prohibited Uses; Signage. No use of any Parcel shall be permitted unless it is allowable under the then applicable zoning ordinance, unless a variance is obtained by an Owner from the appropriate governmental authority. There shall be no outside silos, tanks, towers smoking huts or other out buildings. There shall be no outside storage or pallet areas visible from any street unless such area is properly screened in a manner consistent with other first class warehouse developments of comparable size in the Birmingham, Alabama metropolitan area. There shall be no signage on any building greater than 50 square feet. There shall be no billboards, blinking or movable signs and no signage located adjacent to U.S. Highway 31 other than the existing directory signage.

**Section 3.** Default. The cost of maintaining its respective Parcel shall be solely at the expense of the respective Owner. If an Owner fails to keep its Parcel in compliance with the terms of this Declaration (the "Defaulting Party"), any other Owner (the "Curing Party"), after first giving the Defaulting Party not less than 60 days prior written notice (except in the case of emergency repairs), may cause such work to be performed. The Defaulting Party shall thereafter submit to the Curing Party a statement of charges for such work, together with supporting documentation for the cost of performing such work. The Curing Party shall use reasonable efforts to cause the charges for such work to be minimized. The Defaulting Party shall reimburse the Curing Party for such costs, calculated as provided above, within 30 days after receipt of such a statement. If the Defaulting party shall fail to pay its share of such charges, the Curing Party shall have the right to place a lien against the Parcel owned by the Defaulting Party and to enforce such lien in the same manner as provided for in the case of mechanic's and materialmen's liens under Alabama law. In addition, the Defaulting Party shall pay all reasonable attorneys' fees and costs of collection incurred by the Curing Party in connection with collecting, or attempting to collect, such costs.

**Section 4.** Duration of this Declaration. This Declaration and each easement created hereby will continue for a term of twenty (20) years from the date of this Declaration and will thereafter continue in full force and effect so long as any easement created hereby is used by any Owner.



**Section 5.**     Legal Effect. Each of the covenants and rights created by this Declaration shall run with the land and shall be appurtenant to the Parcel to which it relates for the term specified above and shall not be transferred, assigned or encumbered except as an appurtenance to such Parcel. Each covenant contained in this Declaration (i) constitutes a covenant running with the land, (ii) binds every Owner now having or hereafter acquiring an interest in any Parcel, and such Owner's successors, assigns and mortgagees, and (iii) will inure to the benefit of each Owner and each Owner's successors, assigns and mortgagees. Upon conveyance of all or any part of any Parcel, the grantee, by accepting such conveyance, will thereby become a party to and be bound by this Declaration

**Section 6.**     No Dedication. Nothing contained in this Declaration will be deemed to constitute a gift, grant or dedication of any part of any Parcel to the general public or for any public purpose whatsoever, it being the intention of Declarant that this Declaration will be strictly limited to the private use of the Owners and their respective agents, customers, patrons, guests, invitees, licensees, employees, servants, contractors, mortgagees and tenants. This Declaration is intended to benefit the Owners and their respective successors, assigns and mortgagees.

**Section 7.**     Effect of Breach. Breach of any of the covenants contained in this Declaration shall not defeat or render invalid title to a Parcel or the lien of any mortgage or deed of trust made in good faith or for value as to any portion of any Parcel, but all of the foregoing easements and covenants shall be binding and effective against any Owner, including any Owner whose title is acquired by foreclosure, deed in lieu of foreclosure and otherwise.

**Section 8.**     Notices. All notices, statements, demands, approvals or other communications to be given under or pursuant to this Declaration shall be in writing and shall be delivered in person or by certified or registered mail, postage prepaid. If mailed, notice will be deemed to have been given three (3) days after the date of mailing. The address of each Owner for purposes of this Section 6 is the address for tax notices for such Owner's Parcel as of the date notice is given.

**Section 9.**     No Additional Waiver Implied by One Waiver. In the event any covenant contained in this Declaration should be breached by any Owner and thereafter waived by another Owner, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

**Section 10.**    Amendment. This Declaration may be amended only by an instrument in writing duly executed by all Owners who are affected by the terms of such amendment. No amendment shall be affected by any course of conduct or dealing among the Owners or by custom or practice.

**Section 11.**    Severability. The provisions of this Declaration are severable, and in the event any provision hereof shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**Section 12.** Governing Law. This Declaration shall in all respects be governed by and construed in accordance with the laws of the State of Alabama.

**Section 13.** Time of the Essence. Time is of the essence in this Declaration.

**Section 14.** Captions. The section titles and headings are for convenience only and do not define, modify or limit any of the terms and provisions hereof.

**Section 15.** Miscellaneous. In the event that the responsibility ("Responsibility") for maintenance, repair or operation, or the expense of any thereof, is specifically allocated to the Owner of one of the Parcels pursuant to that certain Declaration of Easements dated November 8, 2005, and recorded November 14, 2005 at Instrument number 20051114000593080 in the Office of the Judge of Probate of Shelby County, Alabama ("2005 Easement") in any manner inconsistent with this Declaration, nothing contained in Section 1 or in Section 3 of this Declaration is intended to modify the same, and accordingly to the extent that the Responsibility as provided in this Declaration is inconsistent with the 2005 Easement, the terms of the 2005 Easement shall be controlling in all respects.

[Signature pages follow]



IN WITNESS WHEREOF, the parties have caused this Declaration to be executed on the day and year first above written.

**CALERA 3280, LLC**

By [Signature]  
Its Partner

**SCP NEW, LLC**

By: **Graham & Company, Inc.**  
Manager

By Michael Graham  
Its President

**SCP BUILDING 4, LLC**

By: **Graham & Company, Inc.**  
Manager

By Michael Graham  
Its President

**O'BRIEN ONE, LLC**

By [Signature]  
Its MEMBER


**DIXON ONE, LLC**

By Gail Dixon  
Its Partner

Prepared by:  
David W. Stephenson  
1819 Fifth Avenue North  
Birmingham, Alabama 35203-2104

STATE OF ALABAMA

JEFFERSON COUNTY

  
20070817000388130 6/8 \$35.00  
Shelby Cnty Judge of Probate, AL  
08/17/2007 10:25:20AM FILED/CERT

I, the undersigned, a notary public in and for said county in said state, hereby certify that Dennis O'Brien, whose name as Member of CALERA 3280, 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 for and as the act of said company.

Given under my hand and official seal this 20 day of July, 2007.

Margaret A. Aldrich  
Notary Public

[NOTARIAL SEAL]

My commission expires: 3-2-11

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 President of Graham & Company, Inc., the Manager of SCP NEW, 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 for and as the act of said company.

Given under my hand and official seal this 20 day of July, 2007.

Melanie N. Davis  
Notary Public

[NOTARIAL SEAL]

My commission expires: 01-26-08

20070817000388130 7/8 \$35.00  
Shelby Cnty Judge of Probate, AL  
08/17/2007 10:25:20AM FILED/CERT

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 President of Graham & Company, Inc., Manager of SCP BUILDING 4, 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 for and as the act of said company.

Given under my hand and official seal this 20 day of July, 2007.

Melanie N. Daily  
Notary Public

[NOTARIAL SEAL]

My commission expires: 01-26-08

STATE OF ALABAMA )  
:  
JEFFERSON COUNTY )

I, the undersigned, a notary public in and for said county in said state, hereby certify that DENNIS O'BRIEN, whose name as Member of O'BRIEN ONE, 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 for and as the act of said company.

Given under my hand and official seal this 20 day of July, 2007.

Margaret A. Schuch  
Notary Public

[NOTARIAL SEAL]

My commission expires: 3-2-11

STATE OF ALABAMA

JEFFERSON COUNTY

20070817000388130 8/8 \$35.00  
Shelby Cnty Judge of Probate, AL  
08/17/2007 10:25:20AM FILED/CERT

I, the undersigned, a notary public in and for said county in said state, hereby certify that Gail Dupon, whose name as Member of DIXON ONE, 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 for and as the act of said company.

Given under my hand and official seal this 20 day of July, 2007.

Margaret A. Scherth

Notary Public

[NOTARIAL SEAL]

My commission expires: 3-2-11