

THIS TRUST INDENTURE, Made this 8<sup>th</sup> day of April, 1976, by and between Pelham Sewer Fund, Inc., a corporation organized and existing under and by virtue of the laws of the State of Alabama, hereinafter called "GRANTOR" or "PARTY OF THE FIRST PART"), and BIRMINGHAM TRUST NATIONAL BANK, TRUSTEE, A national banking association duly chartered, organized and existing under and by virtue of the laws of the United States of America, (hereinafter called "TRUSTEE" or "PARTY OF THE SECOND PART").

## WITNESSETH:

THAT WHEREAS, Cahaba Valley Homes, Inc., an Alabama corporation, is the owner of property known as Cahaba Valley Estates and Cahaba Manor, located in the City of Pelham, County of Shelby, State of Alabama, which property is being improved and developed by the construction of dwellings thereon; and

WHEREAS, Grantor is the owner of certain property, (hereinafter more particularly described) upon which there is located a sewerage system including a sewage collection system and appurtenances together with a sewage treatment plant (hereinafter referred to as "sewerage system"), for the purpose of supplying sewage disposal service to all properties connected to or to be connected to the sewerage system; and

WHEREAS, the Federal Housing Administration will not accept for insurance, and the Veterans Administration will not guarantee or insure, mortgage loans covering the separate properties and improvements built or to be built thereon, without receiving assurances as to the continuous and satisfactory operation of the said sewerage system; and

WHEREAS, such improvement and development of the properties and the future financing and sale of the properties is contingent upon the insurance of said mortgage loans by the Federal Housing Administration or the guaranty or insurance of said mortgage loans by the Veterans Administration; and

WHEREAS, it is the intention and purpose of the Grantor that such sewerage system shall be used and operated to provide adequate disposal of sewage for each of the properties connected thereto, regardless of the ownership of the individual properties, and properly to maintain the sewerage system so that it will not adversely affect said properties, and to assure the continuance of the operation and maintenance of such sewerage system for the benefit of the present and future owners of the properties connected thereto, the mortgagees holding mortgages covering such property, and the Federal Housing Administration and the Veterans Administration.

19760521000047300 1/11 \$ .00  
Shelby Cnty Judge of Probate, AL  
05/21/1976 12:00:00AM FILED/CERT

BOOK 298 PAGE 802

NOW, THEREFORE, for and in consideration of the undertakings of the Grantor to provide and assure the maintenance and operation of the sewerage system as aforesaid and the further sum of One Dollar (\$1.00) Lawful money of the United States cash in hand paid to Grantor by Trustee, the receipt whereof is hereby acknowledged, the Grantor does hereby grant and convey to the Trustee, the following property, to wit:

(A) All of the right, title and interest of the Grantor in and to the following described real property, together with all improvements thereon and appurtenances thereto, subject to the restrictions contained in paragraph (C) of this granting clause:

A tract of land situated in the South 1/2 of the Northwest 1/4 of Section 12, Township 20 South, Range 3 West, Shelby County, Alabama, and more particularly described as follows: Commence at the Northwest corner of Section 12 by turning an angle of 119 degrees 01 minutes 44 seconds to the left from the North Boundary of Section 11, Township 20 South, Range 3 West; thence run in a Southeasterly direction, a distance of 2409.95 feet, to the Point of Beginning; thence an angle left of 11 degrees 06 minutes 38 seconds and run in a Southeasterly direction a distance of 300 feet; thence an angle right of 90 degrees and run in a Southwesterly direction a distance of 210 feet; thence an angle right of 90 degrees and run in a Northwesterly direction a distance of 300 feet; thence an angle right of 90 degrees and run in a Northeasterly direction a distance of 210 feet to the Point of Beginning together with all improvements thereon and appurtenances thereto.

Tract of land being that area enclosed by fence, surrounding Sewage Treatment Plant.

(B) The sewage collection system including all appurtenances such as manholes, pumping stations, etc. and the sewage treatment plant including effluent line to point of final disposal, heretofore constructed or to be constructed, including all easements incident to the ownership and operation of said sewerage system.

(C) The Grantor, in granting to the Trustee hereunder the sewerage system and real property described hereinabove in sub paragraph (A), restricts the sewerage system to serving only properties where new construction is proposed in Cahaba Manor, Cahaba Valley Estates Seventh Sector and the future development of Cahaba Valley Estates as shown in the preliminary plan attached hereto as Exhibit "A", five lots in Cahaba Valley Estates Third and Fourth Sectors and two lots in Oak Mountain Estates. The Grantor reserves the right to continue connecting properties to the sewerage system until the sewerage system is operating at full capacity as approved by the Alabama Water Improvement Commission, or other agency or instrumentality of the State of Alabama having jurisdiction to give such approval.

BOOK 298 PAGE 803

These restrictions shall run with the land and shall be binding on the Trustee, its successors and assigns and the owners from time to time, whoever they may be, of the said properties or any part thereof, mortgagees and others, including governmental authorities, having any right, title or interest in and to said properties or any part thereof.

Further, the Grantor hereby warrants that there are no existing encumbrances or liens except as follows to or against the sewerage system and real property conveyed hereunder other than the following:

1. Current year property taxes.

And warrants that the above said encumbrances, liens, or indebtedness (if any) have been subordinated to this conveyance and are subject to this trust deed.

This conveyance is upon the trusts and for the purposes following, to wit:

1. This grant is for the benefit of the present and future owners of all and each of the properties now or hereafter connected to the said sewerage system, as well as the holders of the mortgages covering each of the properties and Trustee shall hold the title to the property granted by this indenture until either (a) the sewerage system is taken over by either a Governmental authority or a public utility (regulated and controlled as to rates and services by a duly constituted public regulatory body or commission) for maintenance and operation, or (b) other adequate sewerage service is provided either by a Governmental authority or public utility (regulated and controlled as to rates and services by a duly constituted public regulatory body or commission) through means other than the operation of sewerage system and facilities now transferred to the Trustee herein. Upon the happening of either of such events at a time when the Grantor is still operating and managing the sewerage system in accordance with the terms and provisions hereof, the Trustee shall upon receipt of written notice of the happening of either of such events reconvey the property to the Grantor, its successors or assigns, and this indenture shall be of no further effect.

2. The Grantor agrees to provide at all times, for each of the properties connected to the said sewerage system, service adequate

19760521000047300 3/11 \$ .00  
Shelby Cnty Judge of Probate, AL  
05/21/1976 12:00:00AM FILED/CERT

BOOK 298 PAGE 304

for the safe and sanitary collection, treatment, and disposal of all domestic sewage from said dwellings. The Grantor further shall operate and maintain the sewerage system, including the sewage treatment plant, in a manner so as not to pollute the ground, air, or water in, under or around said properties with improperly or inadequately treated sewage, or with noxious or offensive gases or odors. The Grantor further agrees to operate the system in accordance with regulations and recommendations of the State Board of Health and any and all other public authorities having jurisdiction in such matters, and to produce an effluent of a quality satisfactory to the State Board of Health and any and all other public authorities having jurisdiction over such matters. Records of any and all tests conducted in connection with said system shall be kept as permanent records by the Grantor and said records shall be open to inspection by the State Board of Health of the State of Alabama, and the owners of the properties connected to the said sewerage system. The said Board of Health and/or its agents shall at all times have access to the plant of the Grantor to conduct any and all tests as said Board shall consider necessary to determine compliance with the said regulations and recommendations. In the event said Board shall determine that the operation of the system does not meet the said regulations or recommendations, the Grantor shall with reasonable dispatch at its sole costs make any adjustment, repair, installation, or improvement that shall be necessary or recommended by said Board to bring the operation of the system up to the said regulations and recommendations.

3. The Grantor shall maintain said sewerage system at all times in good order and repair so that satisfactory service as aforesaid may be supplied to each of said properties as provided in paragraph 2 above.

4. Until the happening of one of the events set forth under paragraph numbered 1 above: Should Grantor fail to operate and manage the sewerage system, in the manner and under the conditions specified in paragraphs numbered 2 and 3 above and should Grantor fail, after notice in writing from the Trustee, to correct such failure with reasonable dispatch, then Trustee shall have the right to immediate possession of the sewerage system for the purpose of operating and maintaining the same, and the right to hold, use, operate, manage,

BOOK  
298 PAGE 805



19760521000047300 4/11 \$.00  
Shelby Cnty Judge of Probate, AL  
05/21/1976 12:00:00AM FILED/CERT

and control the same either itself or by or through any of the agencies or parties for whose benefit this trust is created and it may take possession thereof for the purpose of operating the same, and in that event, the Trustee or the entity operating the sewerage system in its behalf or in the behalf of any of the beneficiaries of this trust, shall be subrogated to all rights of the Grantor to levy and collect a charge against each customer at rates not in excess of those specified in paragraph numbered 6 herein. Such notice given to Grantor by Trustee shall be given by Trustee to Grantor upon Trustee receiving notice from the State Board of Health that Grantor refuses to bring the operation of the system up to the regulations of the State Board of Health.

5. In the event the Trustee takes possession of the sewerage system pursuant to the provisions of paragraph numbered 4 or paragraph numbered 6 the Grantor shall have no further right, title or interest in or to the sewerage system or other property granted by this indenture and shall not be entitled to any portion of the proceeds resulting from any sale of such system or property; but the Trustee shall have the right to transfer such system to a governmental authority upon such terms or conditions as may be approved by the Trustee and the owner or owners of a majority of the properties connected to the sewerage system.

6. The Grantor reserves the right to levy and collect a charge for sewerage services provided to the occupants of each of the properties connected to the sewerage system in the amount of \$5.00 per month per household.

A zero discount will be allowed if paid within N/A days after same is due. A fee of 10% of the service charge will be charged for late payment. Service shall be charged on a prorata basis from the date the service is established at the request of the customer to the date of its discontinuance.

(a) The Grantor agrees that for the first year of operation of the sewerage system the above rates shall be deemed reasonable.

(b) The Grantor shall maintain accurate books relative to the sewerage system. Such books shall be available for inspection by a person or persons designated in writing by the Trustee or designated in writing by not less than one-third of the beneficiaries of this Trust; provided,

19760521000047300 5/11 \$ .00  
Shelby Cnty Judge of Probate, AL  
05/21/1976 12:00:00AM FILED/CERT

BOOK 298 PAGE 806

that the continuing right of inspection hereby created shall be exercised only at the place where such books are customarily maintained in Birmingham, Alabama; that such right of inspection shall be exercised during usual business hours, after reasonable notice and in such a manner as not to hamper unduly or interfere with the conduct of the Grantor's business.

(c) Changes in rates may be proposed by the Grantor and by the said beneficiaries. If within 90 days after written notice to the Trustee and to the beneficiaries of a rate change proposed by the Grantor not more than one-third of the beneficiaries of this Trust shall have signified in writing to the Grantor their opposition to such proposed rate change, and upon written certification by an authorized officer of the Grantor to the Trustee that not more than one-third of the parties connected to the system had signified in writing their opposition to the proposed new rates, the Grantor may forthwith establish such new rates. If more than one-third of the beneficiaries signify in writing to the Grantor their opposition to a rate change proposed by the Grantor, or if more than one-third of the beneficiaries propose in writing to the Grantor a rate change which the Grantor opposes, and the parties can not reach an agreement by negotiation within thirty days after (1) receipt by the Grantor from more than one-third of the parties connected to the system of opposition to the new rates proposed by the Grantor, (2) receipt by the Grantor from more than one-third of such parties of a new rate proposal by such parties which the Grantor opposes: Then the matter of the reasonableness of such new rate proposals shall be referred to a Board of Arbiters selected as follows: The company shall designate one arbiter and so notify the objecting parties; the objecting parties shall designate one arbiter and so notify the company; and the two arbiters thus selected shall choose a third arbiter and so notify the company and the objecting parties. The three arbiters shall make their written recommendations to the parties to the dispute as to the reasonableness of the new rate proposals within ninety (90) days after the reference of the dispute to them. The arbiters shall conduct a hearing of the dispute within thirty days after reference of the dispute to the arbiters, and reasonable notice in writing of the time of such hearing shall be given to the company and to all objecting parties

19760521000047300 6/11 \$ .00  
Shelby Cnty Judge of Probate, AL  
05/21/1976 12:00:00AM FILED/CERT

BOOK 298 PAGE 807

by the arbiters. All proceedings before the arbiters shall be recorded in writing. Either side to the arbitration may present written objections to the recommendations of the arbiters within thirty (30) days after written notice of the decision shall have been communicated to the company and to all objecting parties. If no written objections are made, it shall be considered that all parties have agreed that the new rates recommended by the arbiters are reasonable. If written objections are filed by either side, the question of the reasonableness of the new rates shall be the subject of review by a court of competent jurisdiction in appropriate legal proceedings initiated for such purpose by either the company or any objecting party. In the event of arbitration or court proceedings the proposed change of rates shall be held in abeyance and shall not become effective until the conclusion of such proceedings; provided, that if no legal proceedings shall have been filed within ninety (90) days after communication of the decision of the arbiters to the company and the objecting parties, the decision of the arbiters shall become final and shall be implemented forthwith. All cost of arbitration shall be paid by the losing party or parties, or as otherwise mutually agreed by the Grantor and the beneficiaries. The duly elected officers of a citizens' or property owners' association comprised of the beneficiaries, or the members of a committee duly appointed by such officers, shall prima facie represent more than one-third of the beneficiaries.

(d) Should the Grantor charge rates for sewerage service in excess of reasonable rates, as hereinabove defined, then the Trustee, after receiving written notice from the Board of Arbiters that the Grantor is charging excess rates, shall notify the Grantor of such over-charge by registered mail. Should the Grantor thereafter fail or refuse to establish and maintain fair and reasonable rates, as herein above defined, within ninety (90) days after receipt of the said notice from the Trustee, the Trustee shall have the right to immediate possession of the sewerage system for the purpose of furnishing sewerage service at fair and reasonable rates, and the Trustee shall have the right to hold, use, operate, manage and control the sewerage system, as set forth in paragraph 4 above.

19760521000047300 7/11 \$.00  
Shelby Cnty Judge of Probate, AL  
05/21/1976 12:00:00AM FILED/CERT

BOOK 298 PAGE 808

7. Notwithstanding any other provision of this trust deed, any creditor of record of the Grantor shall have a reasonable period of time to correct any default hereunder prior to the taking over of the property by the trustee.

8. If it should become necessary at any future time for the Trustee, or any entity acting in its behalf, or any beneficiary under this trust indenture, to take over, operate and manage the sewerage system under the provisions of this trust, then and in that event, the operator of such system shall be entitled to a Trustee's fee payable from the income of the sewerage system at a rate not in excess of 10% of the gross charges collected by such Trustee, provided that such Trustee's fee may be increased with the approval of the owner or owners of seventy-five (75) percent of the properties connected to the sewerage system.

9. The Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Trust Indenture, and no implied covenants or obligations shall be read into this Trust Indenture against the Trustee. In case such an event of default has occurred and is continuing the Trustee shall exercise such of the rights and powers vested in it by this Trust Indenture, and use the same degree of care and skill in their exercise as a prudent man would exercise or use under the circumstances in the conduct of his own affairs. In the exercise of its duties under this Trust Indenture the Trustee shall have and may exercise the following rights.

(a) The Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order or other paper or document believed by it to be genuine and to have been signed or presented by a proper party or parties;

(b) The Trustee may consult with counsel and the written advice of such counsel or any opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, by Trustee or omitted by it hereunder in good faith and in reliance thereon;

(c) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Trust Indenture at the request or direction of any party, unless the Trustee shall have been offered reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in compliance with such

19760521000047300 8/11 \$ .00  
Shelby Cnty Judge of Probate, AL  
05/21/1976 12:00:00AM FILED/CERT

BOOK 238 PAGE 809

request or direction;

(d) The Trustee may but shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order or other paper or document, until requested to do so by the State Board of Health or the Board of Arbiters, but the Trustee, in its discretion may make such further inquiry or investigation into such facts or matters as may see fit, and, if the Trustee shall determine to make such inquiry or investigation, it shall be entitled to examine the books, records and premises of the grantor, personally, or by agent or attorney: and

(e) The Trustee may execute any of the trust or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys, and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder.

10. No provision of this Trust Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

11. The recitals contained herein shall be taken as the statements of the grantor, and the trustee assumes no responsibility for their correctness.

12. At any time except during the continuance of an event of default of which the Trustee shall have actual knowledge or shall been given written notice of the existence thereof the Trustee may resign as Trustee under this Trust Indenture by the delivery of written notice of such resignation to the Grantor and to the Department of Housing and Urban Development, notice of such resignation may be given by first class U. S. mail postage prepaid, addressed to the Grantor and the Department of Housing and Urban Development, respectively, as herein-after set forth:



19760521000047300 9/11 \$.00  
Shelby Cnty Judge of Probate, AL  
05/21/1976 12:00:00AM FILED/CERT

BOOK. 208 PAGE 810

After delivery of its notice of resignation as Trustee delivered by the Trustee to the Grantor and the Department of Housing Urban Development, the Trustee shall continue in office until its successor shall have been appointed to and shall have accepted the office of Trustee under this Trust Indenture, or until one of the following conditions has been met:

1. A Governmental authority or public utility is ready and willing to take over the operation of the sewerage system; or
2. A Third Party Beneficiary Agreement, satisfactory to HUD, has been arranged, or
3. A Property Owners Association, satisfactory to HUD, has been formed for the purpose of owning and operating the sewerage system.

IN TESTIMONY WHEREOF Pelham Sewer Fund, Inc., the Grantor, has caused these presents to be executed in its behalf by Billy D. Eddleman, its President, and its corporate seal to be hereunto affixed and attested by S. James Slay, Jr., its Secretary and the Birmingham Trust National Bank, the Trustee herein named, has caused these presents to be executed by CAREY F. HOLLINGSWORTH, Jr. Vice President - its Trust Counsel, and its corporate seal to be affixed and attested by Agnes M. Myers, the day and year first hereinabove written. In entering into the agreement contained herein and executing this Trust Indenture, Birmingham Trust National Bank acts for itself as Trustee and as representative of and by authority of all persons, firms, corporations or entities which are or may be beneficiaries under the Trust thereby created.

S. James Slay Jr.  
Attest: Secretary

Pelham Sewer Fund Inc. Grantor  
By Billy D. Eddleman President

BIRMINGHAM TRUST NATIONAL BANK Trustee  
By Carey F. Hollingsworth  
Its: Vice President - Trust Counsel

Agnes M. Myers  
Attest: Ass't Sec'y



19760521000047300 10/11 \$.00  
Shelby Cnty Judge of Probate, AL  
05/21/1976 12:00:00AM FILED/CERT

BOOK 298 PAGE 811

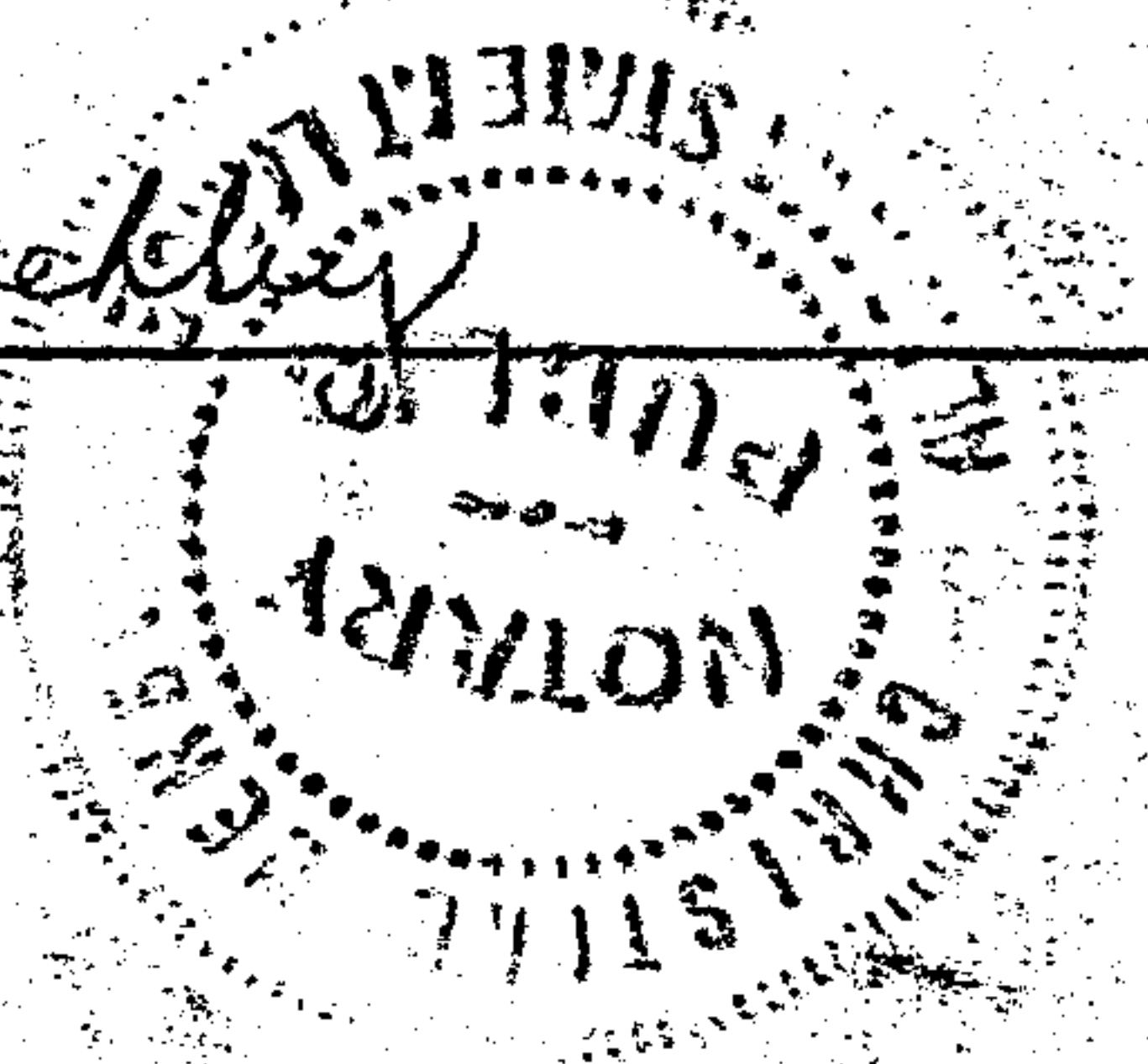
STATE OF ALABAMA )  
JEFFERSON COUNTY )

CORPORATE ACKNOWLEDGEMENT

I, the undersigned, Notary Public, in and for said County in said State, hereby certify that Billy D. Eddleman whose name as President of Pelham Sewer Fund, Inc. a 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 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 8th day of April, 1976.

Christine Wehby  
Notary Public



STATE OF ALA. SHELBY CO.  
I CERTIFY THIS  
INSTRUMENT WAS FILED  
1976 MAY 21 AM 9:58  
Deed Fed 50  
Conrad Johnson  
JUDGE OF PROBATE

BOOK 298 PAGE 812

19760521000047300 11/11 \$.00  
Shelby Cnty Judge of Probate, AL  
05/21/1976 12:00:00AM FILED/CERT