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Shelby Cnty Judge of Probate, AL
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OPR 44-2848-8

✓ ALABAMA POWER COMPANY
AGREEMENT FOR
UNDERGROUND RESIDENTIAL DISTRIBUTION

10266

STATE OF ALABAMA)
SHELBY COUNTY)

THIS AGREEMENT made and entered into this the 3rd day of June, 19 77, by and between Alabama Power Company, a corporation (hereinafter referred to as "Company"), and Fletcher Properties of Alabama, Inc. (hereinafter referred to as "Developer"), the Developer of Kirkwall Subdivision; consisting of 74 lots.

WITNESSETH:

WHEREAS, Developer is the owner of the hereinafter described subdivision and is desirous of obtaining utility service by means of Company's underground distribution facilities for homes to be constructed on all lots to be developed within said subdivision; and

WHEREAS, the underground distribution system required to serve homes on all lots within said subdivision will include underground cables, surface transformers, service laterals and outdoor metering troughs or, housepower boxes; and

WHEREAS, Company is willing to provide electric service by means of an underground distribution system provided Developer complies with the terms and conditions hereinafter set forth; and

WHEREAS, Company has received and accepted a plat approved by appropriate governmental authority subdividing Developer's real estate into lots and designating a street address for each lot, which said plat is recorded in Map Book 6, Page 152-A & 152-B, in the Office of the Judge of Probate of Shelby County, Alabama; and

WHEREAS, Developer has filed for record restrictive covenants requiring all lot owners to install electric service in accordance with the Underground Residential Distribution Program; and

WHEREAS, Developer's total installation payment under this agreement is equal to \$ 18,658.36, which said amount represents the Company's estimated cost of the underground distribution system in excess of the estimated cost of an overhead distribution system, both of said cost calculations being exclusive of individual lot service; and

WHEREAS, Developer understands that Developer's installation payment will not be subject to refund to Developer but may be subject to refund to owners of lots in the subdivision who establish permanent electric service to homes therein prior to fifth anniversary of this agreement and pursuant to the terms and conditions herein contained.

NOW, THEREFORE, in consideration of the premises and the mutual obligations hereinafter recited, it is hereby agreed between the parties as follows:

1. (FILL IN APPLICABLE PROVISION):

Developer will pay Company the total amount of the installation payment (\$ N/A) within ten (10) days from the date of Company's written notice to Developer that said payment is due.

Developer has paid Company the total amount of the installation payment (\$ 18,658.36).

2. Company will own, install and maintain a single phase, underground electric distribution system, including surface mounted transformers, surface mounted enclosures which may contain electrical equipment such as section-alizing devices, capacitors, regulators, etc., and underground cables and the service lateral to the meter socket or

service entrance for each residence in the Kirkwall Subdivision shown on the plat recorded in Map Book 6, Page 152-A & 152-B, in the Office of the Judge of Probate of Shelby County, Alabama, a copy of which, as recorded, has been furnished Company to be retained in its files as an Exhibit to this contract.

3. Developer, prior to the sale of any of said lots in said subdivision, will grant Company, in writing, such rights, easements and restrictive covenants as Company deems reasonably necessary to enable it to install, operate and maintain the underground distribution facilities, including the necessary service lateral on each lot, contemplated by this agreement. Developer agrees to indemnify and save the Company harmless from any and all defects in the reservation of rights for underground electric service to the individual lot purchaser, and in the event it becomes necessary, in the opinion of the Company, to institute litigation to prevent violations of or enforce compliance with any of the restrictive covenants heretofore filed by Developer as referred to above, Developer will take all necessary legal action to prevent said violations or enforce said compliance.

4. Developer will, coincident with the sale to a third party of any of said lots in said subdivision prior to the establishing of permanent electric service, secure an agreement from the said third party in a form to be provided by the Company to the Developer providing for the installation of individual underground electric service under the Company's Rules and Regulations on file with the Alabama Public Service Commission relating to underground electric service in subdivisions. Such agreement will be forwarded to the Company immediately.

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5. In the event Developer requests initial permanent electric service to any of the lots in said subdivision he shall be considered the lot owner for the purpose of this agreement.

6. Prior to commencement of any paving of streets, sidewalks or other areas in said subdivision, Developer will give Company reasonable advance written notice thereof in order that Company may install necessary underground facilities beneath all surface locations within said subdivision proposed to be paved by Developer. Developer, prior to Company's installation, will grade all such streets, sidewalks and other areas to be paved, as well as the locations of all transformer pads and strips in which the underground facilities are to be located, to within four inches of final grade elevation and will further remove all obstructions which in Company's opinion will interfere with Company's installation of the underground distribution system.

7. At any time prior to the fifth anniversary of this agreement, when initial permanent underground electric service is established to a permanent dwelling constructed on a lot in said subdivision, the owner of such lot will make a

payment to Company of \$ 149.00 plus \$ 0.86 per foot for each foot of underground electric service in excess of seventy feet and in addition shall pay to the Company the cost of any rock removal associated with the installation. When electric service is established subsequent to the fifth anniversary of this agreement, such payment will be the amount equal to the then current cost data established by the Company and on file with and approved by the Alabama Public Service Commission, plus the cost of any rock removal associated with the installation. Payment of such amount, less any refund due as calculated in Paragraph 8, below, will be made at the time permanent underground electric service is established to each permanent dwelling constructed on each lot in said subdivision.

8. At the time initial permanent underground electric service is established to a permanent dwelling constructed on any lot in such subdivision or sector thereof, the Company will calculate a refund (without obligation for any interest) to the lot owner as follows:

A. If permanent electric service is established prior to the fifth anniversary of this agreement:

(1) Multiply the estimated annual revenue by 1.4 (investment to revenue ratio) and subtract \$ 350.00 (average cost of an equivalent overhead system). The resulting amount derived will not be considered as less than zero. The investment to revenue ratio and average cost of an equivalent overhead system will be established by Company and be on file with and approved by the Alabama Public Service Commission.

(2) Determine the amount of the lot owner's payment according to Paragraph 7 of this agreement and add to such amount the Developer's average per lot payment.

(3) The amount of the refund will be the amount calculated in A(1) or A(2) of this Paragraph 8, whichever is less.

B. If permanent electric service is established on or after the fifth anniversary of this agreement:

(1) Multiply the estimated annual revenue by the then current investment to revenue ratio and subtract the then current average cost of an equivalent overhead system. The resulting amount will not be considered as less than zero. The then current investment to revenue ratio and average cost of an equivalent overhead system will be established by the Company and will be on file with and approved by the Alabama Public Service Commission.

(2) Determine the amount of the lot owner's payment according to the provisions of Paragraph 7 of this agreement.

(3) The amount of the refund will be the amount calculated in B(1) or B(2) of this Paragraph 8, whichever is less.

9. Company, its successors and assigns, will retain title to the underground distribution system, including the underground service lateral and outdoor metering trough or housepower box (exclusive of circuit breakers) serving each said residence, and said underground distribution system provided by Company will not in any way be considered a fixture or fixtures and thereby a part of said real estate but will remain personal property belonging to Company, its successors and assigns, and will be subject to maintenance and removal by Company, its successors and assigns, in accordance with the applicable Rules and Regulations approved by the Alabama Public Service Commission. This covenant touches and concerns and benefits the land and shall run with the land and shall be binding on Company and Developer, their respective heirs, executors, administrators, successors and assigns.

10. Any written notice to the Company provided for herein shall be addressed to Alabama Power Company, 600 North 18th Street, Birmingham, Alabama 35202. Any written notice to Developer provided for herein shall be addressed to Mr. Howard B. Nelson, Jr., Vice President, Fletcher Properties of Alabama, Inc., P. O. Box 43248, Birmingham, Alabama 35243

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IN WITNESS WHEREOF, each of the parties hereto have executed this agreement on the day and year first above written.

ATTEST:
ALABAMA POWER COMPANY

ALABAMA POWER COMPANY

[Signature]
SECRETARY

By *S. H. Booker*
VICE PRESIDENT

ATTEST:

INVERNESS By
Fletcher Properties of Alabama, Inc.

Mary Carolyn Vernon

By *Howard B. Nelson, Jr.*
XXXXXXXXXX
AS MANAGER

STATE OF ALABAMA)
Jefferson)
COUNTY)

I, Dorothy L. Essig, a Notary Public in and for said County, in said State, hereby certify that S. H. Booker, whose name as Vice President of Alabama Power Company, a corporation, is signed to the foregoing agreement, and who is known to me, acknowledged before me on this date that, being informed of the contents of the agreement, he, as such officer and with full authority, executed the same voluntarily for and as the act of the corporation.

Given under my hand and official seal, this the 15th day of June, 19 77.

Dorothy L. Essig
NOTARY PUBLIC

STATE OF ALABAMA)
SHELBY)
COUNTY)

I, THE UNDERSIGNED, a Notary Public in and for said County, in said State, hereby certify that Howard B. Nelson, Jr., whose name as Vice President of Fletcher Properties of Alabama, Inc. a corporation, is signed to the foregoing agreement, and who is known to me, acknowledged before me on this date that, being informed of the contents of the agreement, he, as such officer and with full authority, executed the same voluntarily for and as the act of the corporation.

Given under my hand and official seal, this the 3rd day of June, 19 77.

STATE OF ALA. SHELBY CO.
I CERTIFY THIS
INSTRUMENT WAS FILED

Anita C. Hyde
NOTARY PUBLIC

My Commission Expires July 22, 1980.

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STATE OF ALABAMA)
SHELBY)
COUNTY)

Thomas A. Snowden, Jr.
JUDGE OF PROBATE
Rec. 4.50
Ind. 1.00
\$ 5.50

I, Anita C. Hyde, a Notary Public in and for said County, in said State, hereby certify that Howard B. Nelson, Jr., whose name(s) is signed to the foregoing agreement, and who is known to me, acknowledged before me on this date that, being informed of the contents of the agreement, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this the 3rd day of June, 19 77.

My Commission Expires July 22, 1980.

Anita C. Hyde
NOTARY PUBLIC