

3289

THIS AGREEMENT relates to the Kerry Downs, 1st Addition,
Subdivision recorded in Map Book 7, Page 73, in the Office of the Judge
of Probate of Shelby County, Alabama. Data in the foregoing sentence has
been supplied subsequent to the date of this agreement.



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Shelby Cnty Judge of Probate, AL
07/31/1978 10:44:00 AM FILED/CERT

ALABAMA POWER COMPANY
AGREEMENT FOR
UNDERGROUND RESIDENTIAL DISTRIBUTION

STATE OF ALABAMA)
)
SHELBY COUNTY)

THIS AGREEMENT made and entered into this the 7th day of June,
1978, by and between Alabama Power Company, a corporation (hereinafter referred to
as "Company"), and 2154 Trading Corporation d/b/a Inverness, by Fletcher Properties
of Alabama, Inc., as Manager
(hereinafter referred to as "Developer"), the Developer of Kerry Downs,
1st Addition, Subdivision; consisting of 19 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 dis-
tribution 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 trans-
formers, 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 con-
ditions hereinafter set forth; and

WHEREAS, Company has received a plat for which preliminary approval has
been received from appropriate governmental authority for the subdivision of
Developer's real estate into lots and designating a street address for each lot,
which said plat is attached hereto and for which the plat of said subdivision which
is finally approved and recorded in the office of the Judge of Probate of

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BOOK

Alabama Power
15 So 20th St
B. Ham 35233



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Shelby County, Alabama, will be substituted therefor; and

WHEREAS, Developer has signed restrictive covenants requiring all lot owners to install electric service in accordance with the Underground Residential Distribution Program and which said restrictive covenants will be filed for record by the Company after said subdivision plat has been recorded; and

WHEREAS, Developer's total installation payment under this agreement is equal to \$ 2,435.23, 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 (\$ 2,435.23).

In the event the subdivision plat recorded subsequent to the date hereof contains changes in the electric system from the plat attached hereto, Developer shall pay or shall receive credit for any increases or decreases in the cost of the required installation payments in accordance with the Rules and Regulations of the

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Company on file with and approved by the Alabama Public Service Commission. Such payment or credit shall be made within ten days after the effect of such change has been determined, or if no payment has been made by Developer, such payment or credit shall be reflected in the notice to Developer that payment is due.

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 sectionalizing devices, capacitors, regulators, etc., and underground cables and the service lateral to the meter socket or service entrance for each residence in the Kerry Downs, 1st Addition, Subdivision shown on the plat attached hereto or as may finally be located in accordance with Paragraph 1 above.

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.

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Such agreement will be forwarded to the Company immediately.

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 \$ 136.00 plus \$ 1.07 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 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.

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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 .76
(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.

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(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 35291. 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.

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

ATTEST:

Robert Bowron
Secretary

ATTEST:

ALABAMA POWER COMPANY

BY *D. W. Booker*
Vice President
2154 Trading Corporation d/b/a J. H. me
Fletcher Properties of Ala, Inc. as Manager
BY *Howard B. Nelson, Jr.*
Its Vice President



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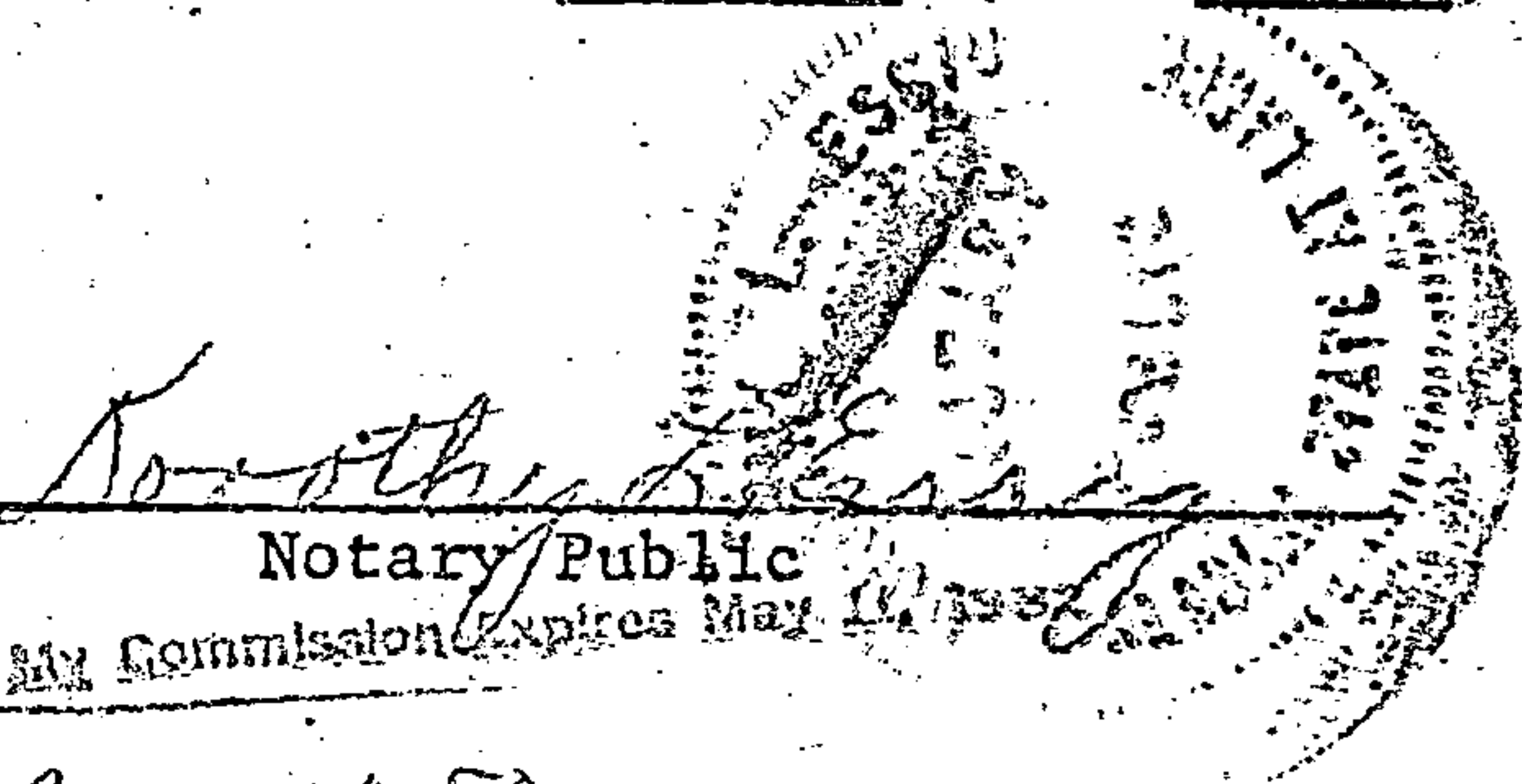
STATE OF ALABAMA)
)
JEFFERSON COUNTY)

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 3rd day of July, 1978.

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

1978 JUL 31 AM 10:44



Rec. 10.50
Encl. 1.00
11.50

STATE OF ALABAMA)
)
Shelby COUNTY)

Thomas A. Snowden, Jr.
JUDGE OF PROBATE

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 7th day of June

Anita Calvert Hyde
Notary Public
My Commission Expires July 22, 1981