

758

ALABAMA POWER COMPANY

AGREEMENT FOR
UNDERGROUND RESIDENTIAL DISTRIBUTIONSTATE OF ALABAMA)
)
SHELBY COUNTY)

THIS AGREEMENT made and entered into this the 18th day of December, 1980,
by and between Alabama Power Company, a corporation (hereinafter referred to as "Company"),
and Davenport Companies, Inc. (hereinafter referred to as "Developer"),
the Developer of Davenport's Addition to Riverchase West, 3rd Sector, Subdivision;
consisting of 37 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, 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: (Check (A) or (B) whichever is applicable)

- ☐ A. A plat approved by appropriate governmental authority subdividing Developer's real estate into lots and designating street names and a number for each lot, which said plat is recorded in Map Book _____, Page _____, in the Office of the Judge of Probate of _____, County, Alabama, a copy of which, as recorded, has been furnished Company to be retained in its files as an exhibit to this agreement; and
- ☒ B. (to be utilized only when governmental requirements preclude the use of option A) 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 street names and a number for each lot, which said plat is attached hereto and for which the plat of said subdivision which is finally approved and recorded in Map Book 81, Page 53, in the office of the Judge of Probate of Shelby County, Alabama, will be substituted therefor. Data in the foregoing sentence has been supplied subsequent to the date of this Agreement. In the event the subdivision plat recorded subsequent to the date hereof contains changes from the preliminary plat attached

BOOK 44 PAGE 127

Return to: TE Hunt
Ala Power
15 So 20th St
Bham AL 35233

hereto which require changes in the electric system, the Developer shall pay for any increases in the cost of the required installation. Such payment 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 shall be reflected in the notice to Developer that payment is due; 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 \$ 12,467.38, 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 inclusive 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 herein-after 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 (\$ 12,467.38)

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 said subdivision.

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.

128
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. The Developer shall notify the individual Lot Owners that at the time permanent electric service is established a contribution may be required from the Lot Owner, subject to the terms of the Developer's URD agreement with the Company.

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. The Developer shall give the appropriate District Superintendent a minimum of sixty days written notice prior to the commencement of the installation of any paving, streets, curbs, sidewalks, etc. After the expiration of 30 days from the date hereof, such notice must be given 30 days prior to the commencement of such installation.

The Developer shall, prior to the Company's construction of the underground distribution system, make the easement in which the underground equipment and conductor are to be located accessible to the Company's equipment, remove all obstructions and grade to within four (4) inches of the final grade elevation. Streets, lot lines and easements shall be clearly marked before URD facilities are installed. All costs incurred by the Company due to improper or inadequate site preparation as stated above, shall be added to the net billing to the Developer. These costs will not be refundable.

7. If initial permanent electric service, single phase, is established within five (5) years from the date hereof, Lot Owner will pay to the Company at the time such service is established the estimated excess trenching cost associated with installation of such service plus the total of either:

- a. \$ N/A for 200 ampere underground lot service not in excess of seventy (70) feet plus \$ N/A per foot for each foot of such underground lot service in excess of seventy (70) feet, or
- b. \$ N/A for 400 ampere underground lot service not in excess of seventy (70) feet plus \$ N/A per foot for each foot of such underground lot service in excess of seventy (70) feet.

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 excess trenching 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.

The cost of any "excess trenching" is defined as that cost incurred over and above the costs generally associated with trenching for underground residential distribution which is due principally to rock or debris removal requirements, requirements to obtain suitable back fill from off-site, trench depth requirements different from that generally employed by the Company, or requirements for boring or additional equipment not generally employed by the Company for underground residential trenching.

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 in effect on the date hereof 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.

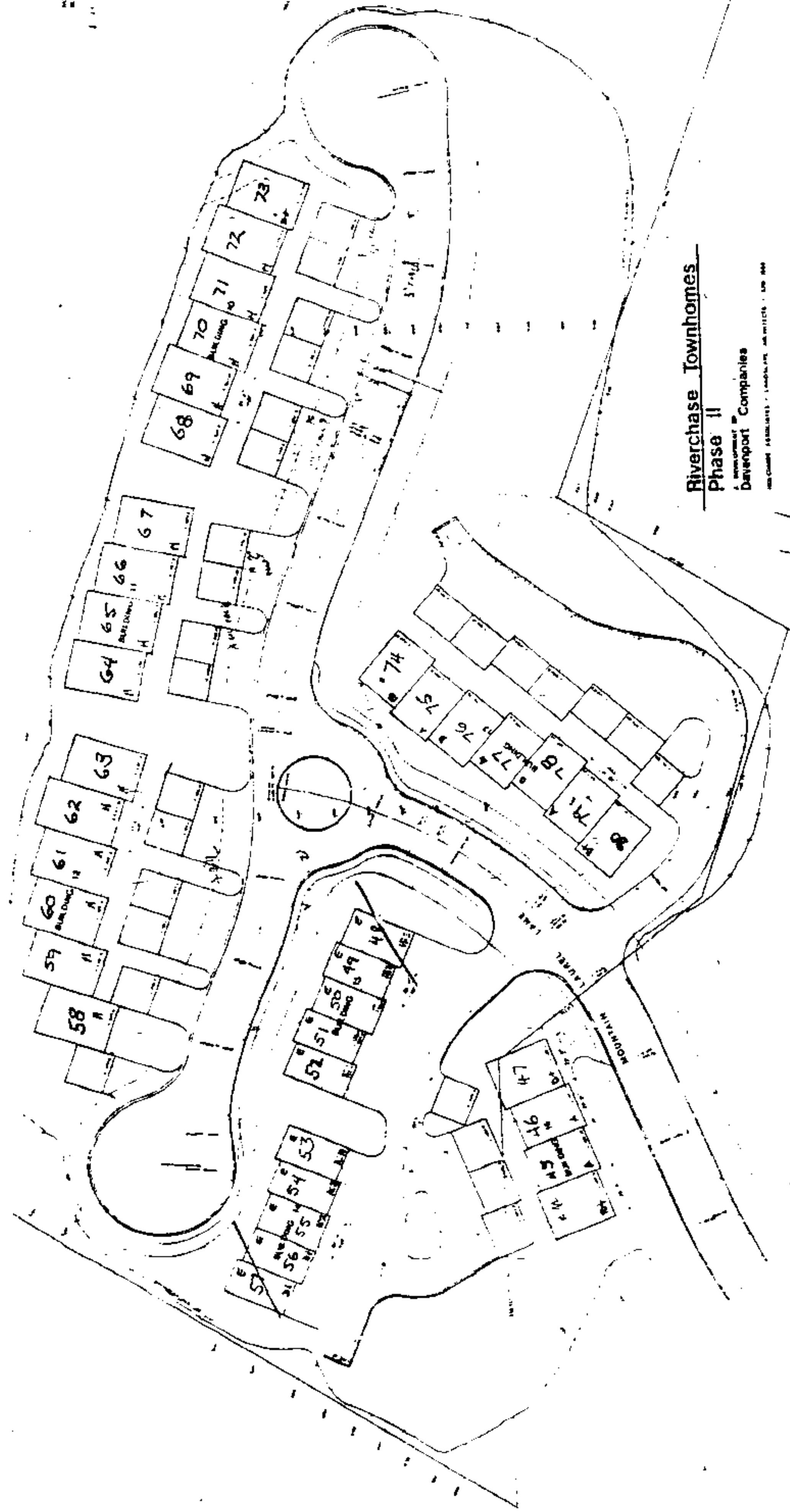
B. If permanent electric service is established on or after the fifth anniversary of this agreement:

- (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.
- (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 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. If the Developer has not paid to the Company the total amount of the installation payment, and if the Developer has not met the site preparation requirements as set forth herein and has not, in good faith, requested the Company to begin the construction of its facilities prior to the expiration of 180 days from the date of this Agreement, the Company will invoice the Developer for the total amount of the installation payment and the Developer shall pay the total amount of such invoice within 10 days thereafter, or the Company shall have the option to cancel this agreement. However, if the Developer has not met the site preparation requirements as set forth herein and has not, in good faith, requested the Company to begin construction of its facilities prior to the expiration of 360 days from the date of this Agreement, the Company shall have the option to cancel this agreement and refund to the Developer any monies collected.

11. Any written notice to the Company provided for herein shall be addressed to Alabama Power Company, Division Manager - Energy Services, 15 South 20th Street, Birmingham, Alabama 35233. Any written notice to Developer provided for herein shall be addressed to Mr. James D. Davenport, President, Davenport Companies, Inc., One Riverchase Office Plaza, Suite 200, Birmingham, Alabama 35244.



it said

SECRET

3RD
SECTOR

For identification by Developer as being part of the Agreement for Underground Electric Service dated 10-2-88.

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

ATTEST/WITNESS:

ALABAMA POWER COMPANY

ALABAMA POWER COMPANY

BY S. H. Booker
VICE PRESIDENT

ATTEST:

DAVENPORT COMPANIES, INC.
DEVELOPER

BY [Signature]
DEVELOPER'S AUTHORIZED AGENT

Louise M. Ezelle

44 PAGE 132

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, Margaret N. Conradi, 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 12th day of January, 1981.

Margaret N. Conradi
NOTARY PUBLIC

STATE OF ALABAMA)
Shelby COUNTY)

I, Louise M. Ezelle, a Notary Public in and for said County, in said State, hereby certify that James D. Davenport, whose name as President of Davenport Companies, 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 18th day of December, 1980.

Louise M. Ezelle
NOTARY PUBLIC