

STATE OF ALABAMA     )  
                              )  
SHELBY COUNTY         )

1967

**PARTNERSHIP AGREEMENT OF  
BELAIRE JOINT VENTURE,  
A GENERAL PARTNERSHIP**

THIS PARTNERSHIP AGREEMENT made and entered into by,  
between, and among David F. Byers, an individual ("Byers"), James  
D. Hutton, an individual ("Hutton"), and Jack L. Shewmake, an  
individual ("Shewmake"). The terms "Partners" or "Venturers" may  
hereinafter be used to describe Byers, Hutton and Shewmake, in  
the aggregate, and the terms "Partner" or "Venturer" may be used  
to describe any one of them.

**W I T N E S S E T H:**

WHEREAS, the undersigned Partners desire to enter into a  
joint venture under the name of BELAIRE JOINT VENTURE (the "Joint  
Venture"), a general partnership, for the purpose of acquiring,  
developing, holding and improving approximately 25 acres of  
undeveloped real estate, which real estate is more particularly  
described as Parcels 1, 2, 3 and 4 on Exhibit A, attached hereto  
and made a part hereof by reference.

WHEREAS, the undersigned Partners desire to enter into this  
Agreement to evidence the entire agreement and understanding of  
the undersigned parties with respect to Belaire Joint Venture, a  
general partnership;

NOW, THEREFORE, these premises considered, the parties  
hereto do mutually covenant and agree as follows:

1. Formation of Joint Venture. Byers, Hutton, and  
Shewmake hereby enter into and form this Joint Venture as general  
partnership for the limited purposes and scope set forth herein.  
The rights and obligations of the Partners and the status,  
administration and termination of the Joint Venture shall be  
governed, to the extent not inconsistent with this Joint Venture  
Agreement, by Alabama Partnership Act [Code of Alabama (1975)],

*Corretti, Newson*

Section 10-8-1, et seq.], but in the event of any conflict between the provisions of the Alabama Partnership Act and the provisions of this Agreement, then the provisions of this Agreement shall control. It is the further intention of the Partners that the Joint Venture as a general partnership be and be construed as an entity capable of holding title to real property in its own behalf as contemplated by the Alabama Partnership Act.

2. Name and Place of Business. The name of the partnership shall be Belaire Joint Venture (hereinafter sometimes referred to as either the "Joint Venture" or the "Partnership") and all business and affairs of the Joint Venture shall be conducted under such name. The principal offices of the Joint Venture shall be located at Suite 200, 100 Century Park South, Birmingham, Alabama 35226, unless relocated by the Partners.

3. Purpose. The purpose of the Joint Venture shall be expressly and strictly limited to the following: to invest in, acquire, hold, maintain, own, develop, improve, sell, exchange, and otherwise use that real estate defined above as the "Property", and more particularly described on Exhibit "A" hereto attached and made a part hereof by reference.

4. Term. The Joint Venture shall begin business on the date hereof and shall continue until the purposes of the Joint Venture have been accomplished, or until January 1, 2006, whichever shall be the first to occur.

5. Scope of Authority. Except as expressly provided otherwise herein, no Partner shall have any authority to act for, or to assume any responsibility or obligation on behalf of, any other Partner or the Joint Venture, and shall be expressly liable to the such other Partner and the Joint Venture for any such unauthorized act which is detrimental to either the other Partner or the Joint Venture.

6. Capital Contributions.

(a) Initial Capital Contributions.

(1) Upon the execution of this Agreement, each partner shall immediately make a Capital Contribution in an amount equal to ten dollars (\$10.00) for each percent of the Percentage Interest owned by that respective Partner. Upon the purchase of the Property, Hutton shall refund to the Joint Venture any commission received by either him or any affiliate of his in connection with the purchase of the Property by the Joint Venture and such refund shall not be considered to be or treated as a Capital Contribution.

(2) Upon the execution of this Agreement, Byers shall cause Lighthouse Development Corp., of which he is the sole shareholder, to transfer, set over and assign to the Joint Venture all of his rights to the Property owned by Lighthouse and to transfer title to such Property to the Joint Venture, and the Joint Venture shall, at such time, accept all obligations of Lighthouse with regard to such Property.

(3) Within sixty (60) days from the date of the execution of this Agreement, the Managing Partner shall attempt to secure financing for the acquisition and development of the Property. Upon the approval of such financing by the Requisite Vote of the Partners, each and every Partner owning in excess of 5% of the profits and losses of the Joint Venture under paragraph 7(a) hereof shall execute any and all documents, agreements, and contracts required by the financing institution and approved by legal counsel for the Joint Venture, including, but not limited to, agreements providing for the joint and several guaranty by each Partner of the loan from such financing institution, real estate mortgages on the Property, promissory notes, conditional sales contracts, chattel mortgages on Joint Venture property, or financing statements. As between the Partners, each Partner shall be at risk and responsible for a proportionate share of

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each and every loan that any individual Partner has personally guaranteed on behalf of the Joint Venture, such proportionate share to be determined based on the Percentage Interest of each Partner, and each Partner shall, to the extent of his proportionate share, indemnify any other Partner who is personally required to satisfy such loans in excess of his proportionate share.

(b) Additional Capital Contributions.

(1) Approval by Partners - The Partners shall be required to make additional capital contributions to finance the holding, development or improvement of the Property, in such amounts and at such times as the Partners may, by a vote of 66% of the Joint Venture Interests (the "Requisite Vote"), determine. It is the intent of the Partners that all funds required to acquire, improve, develop, and hold the Property will be obtained from lending institutions, as provided for in subparagraph 6.a.(3) hereof. In the event the Managing Partner determines that funds in excess of said loans are required for the aforesaid purposes, the Managing Partner shall notify each of the Partners of such cash requirements. The Partners shall, within five (5) days of such notification by the Managing Partner, determine by the Requisite Vote whether such additional capital contributions shall be required of the Partners.

(2) Payment by Partners - In the event the Partners determine by the Requisite Vote that additional capital contributions are required for the aforesaid purposes, each Partner shall advance to the Joint Venture his proportionate share (as determined by his share of the profits and losses) of the total additional capital contribution so required and approved. The additional capital contribution required from each Partner shall be paid by such Partner within fifteen (15) days of the approval of such additional capital contributions by the Requisite Vote.

(c) Excess Capital Contributions. Any additional contribution to the capital of the Joint Venture by a Partner without the approval of the Partners by the Requisite Vote or any contribution to the capital of the Joint Venture by a Partner in excess of his proportionate share of a required additional capital contribution, shall be treated as a loan to the Joint Venture and such Partner shall be entitled to repayment of funds so contributed by the Joint Venture at prevailing interest rates.

(d) Failure to Make Capital Contributions. In the event that a Partner shall fail to contribute his pro rata share to the capital of the Joint Venture (the "Defaulting Partner"), either by refusal to pay his pro rata share of required additional contributions to the capital of the Joint Venture, or by refusal to execute documents in connection with a loan or advance to the Joint Venture, or by a failure to comply with any other provisions of this paragraph 6, with such failure continuing for a period of thirty (30) days after written demand by any of the other Partners, then the other Partners making such demand (the "Non-Defaulting Partners"), at their election, may either:

(i) Each contribute cash to the Joint Venture in an amount equal to their respective pro-rata percentages (determined by their interests in the profits and losses of the Joint Venture) of the proportionate share of the capital contribution of the Defaulting Partner as an additional capital contribution by the Non-Defaulting Partner making such contribution, in which case the interest of the Partners in the profits and losses of the Joint Venture shall be recalculated so that each Partner's percentage interest is equal to the ratio that (A) the sum of his share of the Joint Venture's indebtedness (determined by his share of the profits and losses, prior to such recalculation, under paragraph 7 hereof) plus his capital contributions (including deficit loans under subparagraph (iv) below)

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bears to (B) the sum of the total Joint Venture indebtedness plus the sum of all Partners' capital contributions (including deficit loans under subparagraph (iv) below).

For a period of six months after any such additional capital contribution by the Non-Defaulting Partner, the Defaulting Partner shall have the option to repurchase from the Non-Defaulting Partner the amount subtracted from its interest for a price equal to his proportionate share of the capital contribution which precipitated such reduction, plus interest from date of default at a per annum rate of five percent above the base rate of SouthTrust Bank of Alabama, N.A. Said option can be exercised only by giving written notice, accompanied by full payment, to the Non-Defaulting Partners within such six month period; or

(ii) Each loan to the Defaulting Partner an amount equal to their respective pro-rata percentages of his proportionate share of the capital contribution required to be made, by advancing cash in such amount directly to the Joint Venture on behalf of the Defaulting Partner which loan shall bear interest at a per annum rate of five percent above the base rate of SouthTrust Bank of Alabama, N.A. and shall be payable on demand of the Non-Defaulting Partner. Until demand is made, such loan shall be repaid by the Joint Venture from all distributions which a Defaulting Partner would be entitled to receive but for this provision as provided in subparagraph 7(b) and subparagraph 11(c) hereof. Such distributions shall be credited first to accrued and unpaid interest and thereafter to the unpaid principal of such loans; or

(iii) Treat the amount of such required capital contribution from the Defaulting Partner as a sum of money owed the Joint Venture by the Defaulting Partner, due immediately, together with interest at a per annum rate of

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five percent above the base rate of SouthTrust Bank of Alabama, N.A., and may file suit on behalf of the Joint Venture to collect the same, in which case no offsets owed that Defaulting Partner shall be permitted to reduce the amount of money otherwise owing to the Joint Venture by the Defaulting Partner; or

(iv) Require the Defaulting Partner to sell and assign all of his Joint Venture interest to those of the Non-Defaulting Partners or such other person(s) who shall be designated by the Non-Defaulting Partners at a purchase price equal to the fair market value of such interest as determined by qualified appraisers in the manner described in subparagraph 12(c) below, less an amount equal to twenty-five percent (25%) of such purchase price. The determination of the purchase price hereunder shall be made as of the date of such written demand. In the absence of a contrary agreement among the Non-Defaulting Partners who shall elect to purchase, each Non-Defaulting Partner who shall elect to purchase a part of the Defaulting Partners' interest hereunder shall purchase his proportionate share as determined in accordance with subparagraph 11(b) below; provided, however, that such electing, Non-Defaulting Partners shall collectively be obligated to purchase all of the Defaulting Partner's interest. Any sale pursuant to this subparagraph shall be closed within thirty (30) days of the delivery of the Non-Defaulting Partners' notice electing to purchase the Defaulting Partner's interest.

The Managing Partner shall determine, in his sole discretion but after consulting each of the Non-Defaulting Partners, whether the Defaulting Partner's failure to contribute additional capital required by the Requisite Vote shall be remedied by means of subparagraph (i), (ii), (iii), or (iv) hereof, but in no event shall any Non-Defaulting Partner be

forced to contribute capital on behalf of or to loan money to the Defaulting Partner.

(e) Maintenance of Capital Accounts. An individual capital account shall be maintained in the name of each Partner (the "Capital Account"). The Capital Account shall reflect the capital interest of each Partner as defined below and shall be maintained in accordance with federal income tax accounting principles. Contributions actually paid to the capital of the Joint Venture pursuant to the provisions of this paragraph 6 (including deemed contributions under subparagraph 6.d.) shall be credited respectively to each Partner's Capital Account. Profits and losses of the Joint Venture, as defined in subparagraph 7(a) below, shall be credited to or debited to the individual Capital Accounts of the Partners as soon as practicable after the close of each fiscal year. Except as otherwise provided in paragraph 13 hereof, withdrawals from the Capital Accounts by the Partners shall be made in accordance with the provisions of subparagraph 7(b) hereof and such withdrawals of cash or property from the Capital Accounts of the Partners shall be distributed to the Partners in the proportionate shares set forth in subparagraph 7(a) hereof. The amount of each Partner's distribution from the capital of the Joint Venture shall be debited respectively to his Capital Account.

7. Profits and Losses.

(a) Profits and losses of the Joint Venture shall be determined each year in accordance with the accounting methods followed by the Joint Venture for federal income tax purposes. Profits and losses of the Joint Venture shall be shared by the Partners as herein specified without regard to the amounts in their respective Capital Accounts. The determination of each Partner's distributive share of any Joint Venture item of income, gain, loss, deduction, credit or allowance for any Joint Venture accounting period shall be made in accordance with the following



allocations:

(i) Profits shall be allocated in the following proportions:

Byers	33 1/3%
Hutton	33 1/3%
Shewmake	33 1/3%

and the amount so allocated to each Partner shall be credited to his individual Capital Account; and

(ii) Losses shall be allocated in equal proportions as follows:

Byers	33 1/3%
Hutton	33 1/3%
Shewmake	33 1/3%

and the amount so allocated to each Partner shall be debited to his individual Capital Account.

(b) The Joint Venture shall make distributions in cash or other property to the Partners in such amounts and at such time or times as the Partners shall, by the Requisite Vote deem advisable for the operation of the Joint Venture. Distributions to the Partners shall be made in the proportion of the respective Partner's interest in the profits and losses of the Joint Venture as of the time of distribution which proportion shall be determined by using a fraction in which the numerator is the individual Partner's percentage share of Joint Venture profits and losses as specified in subparagraph 7(a) and the denominator is the sum of the percentage shares of Joint Venture profits and losses as specified in subparagraph 7(a) for all of the Partners entitled to receive such cash distribution. Notwithstanding the above, if a Partner is indebted to the Joint Venture or a Partner under the provisions of subparagraph 6(d) hereof, the Joint Venture shall have the right to offset such indebtedness by applying all or a portion of the distribution of such Partner to liquidate such indebtedness. Distributions shall be deemed to be a withdrawal from the Capital Accounts of the Partners and an

amount equal to each Partner's distribution from the Joint Venture shall be debited respectively to his Capital Account.

(c) A creditor who makes a non-recourse loan to the Joint Venture shall not have or acquire, at any time as a result of making the loan, any direct or indirect interest in the profits, capital or property of the Joint Venture other than as a secured creditor. Any such interest or the acquisition thereof shall be invalid and any rights thereunder are not enforceable against the Joint Venture.

7.A. Management.

(a) Except for those items specifically included in the definition of "Major Decisions" in subparagraph (b) below, all management and control of the business and affairs of the Joint Venture shall be vested in the managing partner of the Joint Venture (the "Managing Partner"), and such Managing Partner shall be Byers. In addition to such management and control, the Managing Partner shall have the following specific administrative duties:

(i) Cause to be disbursed regularly and punctually from funds generated by loans, capital contributions or otherwise, all payments required to be made monthly on mortgages or other indebtedness, any and all taxes and insurance premiums as and when the same become due and payable, amounts reimbursable to the Managing Partner under this Agreement, amounts otherwise due and payable as operating expenses and development expenses for the Property and incurred by the Joint Venture. In the event the funds generated by loans incurred by and profits generated by the Joint Venture are insufficient amount to allow the Managing Partner to make all necessary disbursements, the Managing Partner shall notify each Partner and the Partners shall immediately determine whether the Partners shall be required to make additional capital contributions pursuant to paragraph 6(b) hereof, or whether such lack of funds

may be remedied by other means. The Managing Partner shall not be obligated in such capacity to make any advance for or for the account of the Joint Venture, or to pay any sums, except out of funds of the Joint Venture. The Joint Venture shall, as an operating expense, reimburse the Managing Partner monthly for all expenses paid or incurred in the administrative, management and control of the operation of the Joint Venture.

(2) Maintain, or cause to be maintained, at the expense of the Joint Venture, in a manner customary and consistent with good accounting principles, practices and procedures, a system of office records, books and accounts (which records, books and accounts shall be and remain the property of the Joint Venture) in which shall be entered the financial transactions with respect to the operation of the Property. Bill, receipts, vouchers and time records shall be maintained on file by the Administrative Venturer. The books and records shall be maintained at the principal office of the Joint Venture or at such other place as the Partners shall mutually determine, and each Partner shall at all reasonable times have access to such books, records and accounts and to all vouchers, files and other material pertaining to the Property and to the transactions contemplated by this Agreement.

(3) The Managing Partner shall prepare or cause to be prepared and submit such financial reports and statements as may be directed by a Requisite Vote of the Joint Venture, the cost of such reports and statements to be borne by the Joint Venture.

(4) The Managing Partner shall maintain in the records of the Joint Venture all notices or statements received with respect to bank accounts, insurance policies or mortgages of the Joint Venture, or received from any governmental agency, together with such other notices or statements received by the Managing Partner which threaten or expected to have a material

effect on the Property or the Joint Venture. With respect to any notice or statement received, from any source by the Managing Partner which threatens or is expected to have a material effect upon the Property or the Joint Venture, the Managing Partner shall immediately notify all Partners thereof.

(5) The Managing Partner shall receive compensation in an amount equal to \$250.00 per month for services performed by himself and his employees in the administration, control and management of the Joint Venture, and the Joint Venture shall reimburse the Managing Partner for all expenses incurred by the Managing Partner in such capacity.

(b) "Major Decisions" shall include the following actions and decisions which may, from time to time, be made by the Joint Venture, and the resolutions of all such Major Decisions shall be made by a Requisite Vote of the Partners:

(1) The approval of indebtedness to be incurred by the Joint Venture in connection with the acquisition and development of the Property, as provided in paragraph 6(a)(3) hereof;

(2) The approval of any indebtedness the incurrence of which shall require the joint and several guaranty of the Partners;

(3) The approval of every other indebtedness incurred by the Joint Venture in excess of the amount of \$5,000.00, or the execution or entering into of any contract, whether written or oral, requiring payments to be made by the Joint Venture in excess of the amount of \$5,000.00, or the expenditure of any amount in excess of \$5,000.00 which expenditure is not otherwise authorized by this Agreement;

(4) The approval of additional cash contributions to be made by the Partners, as provided in paragraph 6.b. hereof;

(5) The approval of the architectural plans, drawings, and specifications relating to the development of the

Property, including the location, size, and construction of roads, the size and layout of individual lots, and the design of all fences, walls, landscaping, or other improvements constructed in connection with the main entrance to the Property.

(6) The approval of the price at which lots resulting from the subdivision of the Property or other portions of the Property shall be sold by the Joint Venture. The Managing Partner may in its sole discretion, however, increase or decrease the purchase price established by the Joint Venture by 15% of such price at such time and to such purchasers as he shall deem beneficial to the Joint Venture.

(7) The invitation, adjustment, settlement or compromise of any claim, obligation, debt, demand, suit, or judgment against the Joint Venture.

(c) Notwithstanding any provision contained herein to the contrary, no Partner, without the Requisite Vote of the Partners, has the authority to (i) do any act in contravention of this Agreement; (ii) do any act which would make it impossible to carry on the ordinary business of the Joint Venture; (iii) confess judgment against the Joint Venture; (iv) possess Joint Venture property or assign the rights of the Joint Venture in specific Joint Venture property for other than Joint Venture purposes; or (v) sell or exchange substantially all of the assets of the Joint Venture at a single sale or exchange which takes place at one time or from time to time or in multiple sales at one time. Additionally, notwithstanding any provision contained herein to the contrary, no Partner has the authority to, and no partner except for the Managing Partner shall conduct any business on behalf of or in the name of the Joint Venture, and the authority of all Partners except the Managing Partner shall be exclusively confined to voting on Major Decisions, as such term is defined in Paragraph 7A(b) hereof, and voting on any other issues which are expressly excluded from the authority of

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the Managing Partner under this Paragraph 7A.

(d) The Partners, or any of their affiliates, may form other partnerships, limited partnerships, joint ventures, corporations or other business entities engaged in real estate development, and engaged in activities which are in direct competition with the business of the Joint Venture. Any of the Partners, or any partner, stockholder, employee or other person holding the legal or beneficial interest in an entity which is a Partner, may engage in or possess an interest in other business ventures of every nature and description, independently or with others, including, but not limited to, the ownership, financing, leasing, operation, management, syndication, brokerage and development of real property; and neither the Joint Venture nor the Partners shall have any right by virtue of this Agreement in and to such independent ventures or to the income or profits derived thereto.

(e) The Managing Partner shall have no liability to the Joint Venture, or to another Partner, for any mistakes or errors in judgment or for any act or omission believed by him in good faith to be within the scope of the authority conferred upon him by this Agreement, but he shall have liability for actual omissions involving his intentional wrongdoing as the Managing Partner. The Joint Venture shall indemnify and save harmless the Managing Partner against and from any loss, liability, or damage incurred by him as a result of any act or omission with respect to which he is protected under any provision of this Agreement.

8. Contracts with Related Parties. The Joint Venture shall not enter into any contract or agreement with any Partner for the provision of goods or services to the Joint Venture or the purchase of goods or services from the Joint Venture with any person or entity related to or affiliated with any Partner unless such agreement or contract is approved specifically by a

Requisite Vote of the Partners, except that the Partners hereby specifically authorize the Joint Venture to enter into the following agreements with such related parties:

(a) The Joint Venture shall enter into a Development Agreement with Foxfire Development Corp. for the development of the Property according to the plans and specifications approved by a Requisite Vote of the Partners. Such agreement shall provide that Foxfire Development Corp. shall serve as the general contractor of all development of the Property and for such services shall be paid a fee equal to 3% of the hard costs and expenses (as such terminology is customarily used in the development industry) incurred in the development of the Property. Foxfire Development Corp. shall hire, employ and contract with any person or entity, including, but not limited to, any person or entity related to any of the Partners, for any of the actual survey or architectural services, construction of roads, sewers and utilities, or the provision of any materials utilized in such services.

(b) The Joint Venture shall enter into an Exclusive Listing Agreement with CKM, Inc. which agreement shall grant to CKM, Inc. the exclusive right to sell any and all lots developed by the Joint Venture from the Property for a period of six (6) months from the date that the Joint Venture incurs any debt related to the acquisition and development of the Property, and which agreement may be extended by the Joint Venture by other Requisite Vote of the Partners.

(c) The Joint Venture may enter into a contract for sale of lots developed from the Property with any person or entity related, directly or indirectly, to any of the Partners. All such real estate contracts shall provide for the sale of the subject real estate for a price and on terms and conditions which have been generally included in contracts for the sale of comparable lots between the Joint Venture and persons or entities unrelated to either the Joint Venture or any Partner.

9. Partners' Buy-Sell Agreement.

(a) Subject to the terms and conditions set forth below, the Partners (the "Offerors") after having the approval of the Requisite Vote, may at any time offer to buy all of the Joint Venture interest of any of the Partners, by delivering written notice to such other Partner (the "Offeree") stating the type and value, in dollars, of the consideration and terms of payment at which the Offerors would be willing to buy an undivided 100% interest in the Joint Venture (the "Offer").

(b) Within sixty (60) days after receipt of the Offer, the Offeree shall have the option to sell to the Offerors not less than all of the interest of the Offeree in the Joint Venture on the terms and conditions stated in the Offer at a purchase price equal to the lesser of (i) the 100% price referred to above multiplied by the percentage of such Offeree for the sharing of profits and losses in the Joint Venture set forth in subparagraph 7(a) above; or, in the alternative, (ii) that amount computed by the formula in paragraph 11(c) hereof less and except 25% of such amount. The proportionate share of the Offeree's interest which shall be purchased by each of the Offerors shall be determined by using a fraction in which the numerator is such Offeror's percentage for sharing profits and losses as set forth in subparagraph 7(a) above and the denominator is the sum of such percentage shares for the Offerors desiring to purchase Offerees interest. Nothing herein shall be construed as requiring each Offeror to purchase a portion of the Offerees interest; provided, however, that not less than the entire interest of the Offeree must be purchased by some or all of the Offerors or the Offer shall be null and void.

(c) The closing for the purchase and sale of the interest in the Joint Venture of the Offerors or the Offeree, as the case may be, shall take place at such time and place as may be mutually agreed upon by the parties; provided that the Closing



Date shall occur on or before one hundred twenty (120) days after the date of delivery of the Offer. Effective on the Closing Date, the purchasing Partner(s) shall assume the selling Partner's share of any indebtedness incurred by the Joint Venture, or jointly incurred by the Partners, in connection with the Joint Venture business.

(d) In the event of the purchase of any Partner's interest in the Joint Venture by any of the other Partners, the purchasing Partners shall attempt to effect a release of the selling Partner from any and all liability that such selling Partner has incurred to any lending institution in connection with the business of the Joint Venture. Should the lending institution(s) not be willing to release the selling Partner from such liability, each of the purchasing Partners hereby agree to indemnify and hold harmless the selling Partner from such liabilities in proportion to the respective amount of the selling Partner's interest purchased by each of them.

10. Sale of Assignment of Interest in the Joint Venture.

Except as provided in subparagraph 6(d)(iv) and paragraphs 11 and 12 below, no additional person shall be admitted to the Joint Venture without the unanimous consent of the Partners. No Partner shall assign, pledge or sell his interest or share in the Joint Venture or in its income, profits, capital assets, or property without a Requisite Vote of the Partners.

11. Right of First Refusal.

(a) In the event of the occurrence of any of the following with respect to a Partner:

- (i) the incapacity (physical or mental) of a Partner; or
- (ii) the bankruptcy or insolvency of a Partner; or
- (iii) written notice to the other Partners of a Partner's desire to sell or otherwise dispose of his interest in the Joint Venture;

then such event shall constitute an offer to sell all of the interest in the Joint Venture then owned by such Partner under the terms and conditions set forth in subparagraph 11(c) below.

(b) The remaining Partners shall have the option to purchase their proportionate share of the Joint Venture interest offered by the selling Partner by exercising their rights under said option within ninety (90) days after the occurrence set forth in subparagraph (a) above. The proportionate share of each of the remaining Partners shall be determined by using a fraction in which the numerator is the percentage share of Joint Venture profits and losses for such Partner set forth in subparagraph 7(a) and the denominator is the sum of the percentage shares of Joint Venture profits and losses set forth in subparagraph 7(a) above for all of the remaining Partners who exercise their option to purchase such Joint Venture interest as granted hereunder. For purposes of this paragraph 11, the date of occurrence shall be whichever of the following dates is applicable: (i) the last day of the month in which a Partner is determined incapable to handle his business or affairs, bankrupt or insolvent; or (ii) the last day of the month in which the notice is delivered to the other Partner(s).

(c) Upon the exercise of the options as provided in subparagraph 11(b), the selling Partner shall be obligated to sell, and the remaining Partners having exercised said option shall be obligated to purchase their proportionate share of, all of the Joint Venture interest so offered by the selling Partner at a purchase price to be mutually agreed upon by the purchasing Partner(s) and the selling Partner. The purchase price shall be agreed upon on or before the closing date; provided that if there is then no agreement as to the purchase price the option granted to the purchasing Partners shall lapse and shall have no further force and effect. The purchasing Partner(s) shall pay the full amount of the purchase price in cash at the closing which shall

be at a mutually agreeable time and place not later than thirty (30) days after the exercise of the options herein granted. In the event of such purchase and sale of the selling Partner's interest, the purchasing Partner(s) shall assume the selling Partner's share of any indebtedness incurred by the Joint Venture or jointly incurred by the Partners, with such assumption to be effective at the time of the closing, and the purchasing Partner(s) will hold selling Partner harmless from such indebtedness and any future debts of the Joint Venture.

(d) In the event that the remaining Partners do not purchase all of the Joint Venture interests offered for sale by the selling Partner, as provided in subparagraph 11(c) above, then the selling Partner may sell all of his Joint Venture interest to any other person, at such price and on such terms and conditions as the selling Partner may in his sole discretion determine after ten (10) days advance written notice to the other Partners setting forth the terms and conditions of the proposed sale to a third person; provided, however, that the other Partners shall have the option to purchase their proportionate share of the interest of the selling Partner by exercising their option within ten (10) days after receipt of written notice from the selling Partner. The proportionate share of the other Partners shall be determined in accordance with the method set forth in subparagraph 11(b) above. Upon the exercise of such option, the Partners exercising the option shall purchase their proportionate share of, and the selling Partner shall sell, the selling Partner's interest in the Joint Venture on the terms and conditions specified in the notice. If the remaining Partners fail to exercise the option provided in this subparagraph 11(d), the selling Partner shall have the right to sell his interest in the Joint Venture on the terms and conditions specified in the notice on or before sixty (60) days from delivery of the notice. If such sale is not closed within said sixty (60) day period, the

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right of the selling Partner to sell his interest to such other party shall lapse and any further attempt to sell his interest shall be subject to the terms and conditions of this Agreement, including this paragraph 11.

12. Death of a Partner.

(a) Upon the death of a Partner, the remaining Partners shall make the election to either:

(i) continue the business of the Joint Venture with the successor in interest of the deceased Partner and the successor in interest shall have the same rights and obligations in the Joint Venture for the remainder of the Joint Venture term as such deceased Partner had immediately preceding the date of his death; or

(ii) purchase the entire interest of the deceased Partner in the Joint Venture as provided in subparagraph 12(b) below and continue the business of the Joint Venture under its present name by themselves or in conjunction with any other person the remaining Partners may select; or

(iii) terminate the Joint Venture in accordance with paragraph 13 hereof.

Any of the remaining Partners shall make the aforesaid election by giving written notice of their election to the estate of the deceased partner within sixty (60) days from the date of death; provided that if the previously mentioned notice is not given to the estate of the deceased partner on or before the expiration of the said sixty (60) day period, the Joint Venture shall be continued as provided in subparagraph 12(a)(i) above.

(b) In the event that any of the remaining Partners elect to purchase the entire interest of the deceased Partner in the Joint Venture as provided in subparagraph 12(a)(ii) above, the remaining Partners electing to participate in such purchase shall purchase their proportionate share of, and the estate of the deceased Partner shall sell, the entire interest of the

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deceased Partner in the Joint Venture at the purchase price and on the terms and conditions to be mutually agreed upon by the remaining Partner and the estate of the deceased Partner. The proportionate share of each of the remaining Partners shall be determined by using a fraction in which the numerator is such Partner's percentage share of Joint Venture profits and losses as set forth in subparagraph 7(a) hereof and the denominator is the sum of the percentage shares of Joint Venture profits and losses of all of the remaining Partners desiring to purchase a portion of the deceased Partner's interest in the Joint Venture. In the event no mutual agreement is reached within sixty (60) days from the date of death as above provided, the purchase and sale of the deceased Partner's interest, as required by this subparagraph 12(b), shall be at the purchase price and on the terms and conditions set forth in subparagraph 12(c) below. In the event of such purchase and sale of the deceased Partner's interest, the remaining Partners shall assume the deceased Partner's share of any indebtedness incurred by the Joint Venture, or jointly incurred by the Partners, with such assumption to be effective on the date of death, and the remaining Partners will hold the deceased Partner and the deceased Partner's estate harmless from such indebtedness and any future debts of the Joint Venture.

(c) In the event that there is no mutual agreement as to the purchase price and the terms and conditions as above provided, proper adjustment shall be made in the Capital Accounts of each Partner from the date of the last previous accounting to the last day of the calendar month immediately preceding the date of death of the Partner. The value of the interest of the deceased Partner as of said date shall be an amount equal to the sum of: (i) his Capital Account; (ii) the amount of any liability which the Joint Venture may have to the deceased Partner pursuant to subparagraph 6(c) hereof; and less (iii) the amount of any liability which the deceased Partner may have to

the Joint Venture pursuant to subparagraph 6(d) hereof; provided that if the aforesaid sum is zero or negative, then the estate of the deceased Partner shall convey his interest in the Joint Venture to the remaining Partners without charge.

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The value of the interest of the deceased Partner, as determined in accordance with the foregoing, shall be increased or decreased by the proportionate share of the difference, if any, of the fair market value of the equity in any real property owned by the Joint Venture on the date of death and the amount at which such property is carried on the books of the Joint Venture, as adjusted to the date of death. The fair market value shall be determined by a composite appraisal prepared and submitted by an appraiser selected by the estate of the deceased Partner and an appraiser selected by the remaining Partners; provided, however, that if the previously mentioned appraisers are not able to agree as to the fair market value of the property, said appraisers shall select an additional appraiser, and the fair market value shall be the value agreed to by a majority of said appraisers. The cost of such appraisal shall be evenly divided between the estate of the deceased partner and the remaining Partners. The value of the interest of a deceased Partner shall be determined under the supervision of the accounting firm engaged to maintain the books and records of the Joint Venture on the date of death, and all adjustments required to be made in the various Joint Venture accounts pursuant to the terms of this Agreement shall be made by or under the direct supervision of said accounting firm. For purposes of this subparagraph 12(c), the deceased partner's Capital Account shall be taken as shown on the books of the Joint Venture, as adjusted to the date of death without any allowance for good will, trade name, or other intangible assets. The purchase price for the interest of the deceased Partner shall be paid in cash at the closing. The closing shall be at such time and place as may be mutually agreed upon by the Partners;

provided that the closing date of any such purchase and sale shall be on a date not later than one hundred twenty (120) days after the date of death.

13. Termination and Liquidation of the Joint Venture.

Unless terminated under the provisions of paragraph 4, 10, 11, or 12 hereof, the Joint Venture shall continue until the unanimous written agreement of the Partners to terminate the Joint Venture. Upon such voluntary termination by agreement, the affairs of the Joint Venture shall be liquidated forthwith. The assets of the Joint Venture shall be used and distributed in the following order:

(a) to the payment of debts and liabilities of the Joint Venture (other than any loans or advances that may have been made by the Partners to the Joint Venture) and expenses of liquidation;

(b) to the setting up of any reserves which a Requisite Vote of the remaining Partners may deem reasonably necessary for any contingent or unforeseen liabilities or obligations of the Joint Venture or of the Partners arising out of or in connection with the Joint Venture;

(c) to the repayment of any loans or advances that may have been made by any of the Partners, but if the amount available for such repayment shall be insufficient, then pro rata on account thereof; and

(d) to discharge the balance of the Capital Accounts of each Partner, but if the amount available for such repayment shall be insufficient then pro rata to each Partner in the same proportionate share that his Capital Account bears to the total Capital Accounts of the Partners.

(e) to the Partners according to their interests in the profits and losses of the Joint Venture, as specified in paragraph 7(a) hereof.

14. Books of Account; Annual Accounting.

(a) Proper and complete books of account shall be kept at all times and shall be open to inspection by any Partner or his accredited representative at any reasonable time during business hours. The Joint Venture's election for accounting methods for federal income tax purposes shall be determined by the Partners, and the Joint Venture's return of income for each year shall be approved by the Partners prior to the filing with the taxing authorities.

(b) The Joint Venture's fiscal year for accounting and tax purposes shall commence on January 1 and conclude on December 31 of each year. The fiscal year shall not be changed unless agreed to by all Partners.

(c) The books of account shall be examined and reviewed as of the close of each fiscal year by independent certified public accountants who shall make a report thereon. The report shall not be audited unless the Partners, by Requisite Vote, shall request an audit by such accountant. The report shall furnish information needed for income tax purposes and a statement of Joint Venture profit and loss and it shall be delivered to all Partners within a reasonable time from the close of the Joint Venture's fiscal year.

(d) The funds of the Joint Venture shall be deposited in a Joint Venture account or accounts in a bank or banks approved by the Partners.

15. Relationship of Partners. It is specifically understood and agreed by and between the Partners that this Joint Venture extends only to and is limited to the rights and obligations under this Agreement, and nothing herein shall be construed to constitute any Partner the general agent of another Partner, nor in any manner to limit the Partners from carrying on their respective business or activity other than the activities included within the scope of the Joint Venture. Nothing herein shall deprive or otherwise affect the right of any Partner to



own, invest in, manage, or operate property or to conduct business activities which are competitive with the business of the Joint Venture.

16. Litigation. The Partners shall jointly and severally respond to any final decree, judgment or decision of any court, board or authority, having jurisdiction in the premises. The Partners shall satisfy any judgment, decree or decision first out of insurance proceeds available therefor, next from the assets of the Joint Venture, and finally out of the assets of the Partners according to those percentages specified in subparagraph 6(a)(3) of this Agreement.

17. Amendment. This Agreement is the entire agreement between the parties with respect to the subject matter hereof and no alteration, modification or interpretation hereof shall be binding unless in writing and signed by all of the Partners.

18. Notice. Written notice is required to effectively exercise the options established herein. All written notices required or which may be given pursuant to this Agreement shall be sufficient if in writing and delivered to the Partner entitled thereto by personal service or by depositing the notice in the United States mail, postage prepaid, return receipt requested, addressed as follows:

If to Byers, then to:

Mr. David F. Byers  
c/o Foxfire Development Corp.  
100 Century Park South  
Suite 200  
Birmingham, Alabama 35226

If to Shewmake, then to:

Mr. Jack Shewmake  
1231 Atkins-Trim Boulevard  
Birmingham, Alabama 35226

If to Hutton, then to:

James D. Hutton  
c/o Hutton Development  
3195 Cahaba Heights Road  
Birmingham, Alabama 35243

or to such other address as the party addressed shall have previously designated by notice to the other parties given in accordance with this paragraph; except that notices to an executor, administrator, representative, successor or assign of a Partner shall be mailed to such executor, administrator, representative, successor or assign at the address to which notices to such Partner would have been mailed unless the executor, administrator, representative, successor or assign shall have designated a different address in writing. All notices shall be deemed to have been delivered when deposited in the mail as specified in this paragraph; provided that a notice or demand not given as above, if it is in writing, shall be deemed to have been given if and when actually received by the Partner to whom it is required or permitted to be given.

19. Miscellaneous.

(a) All real or personal property acquired by the Joint Venture shall be owned by the Joint Venture and all deeds or other instruments conveying such property to the Joint Venture, shall reflect the Joint Venture as the owner of such property.

(b) The covenants and agreements herein contained shall inure to the benefit, and be binding upon, the parties hereto and their respective successors and assigns. Any person succeeding to the interest of the Partners shall succeed to all of such Partner's right, interest and obligations hereunto, subject to and with the benefit of all of the terms and conditions of this Agreement. Whenever the term "Partner" is used in this Agreement, it shall also be deemed to include the successor(s) in interest to such Partner.

(c) If any provision of this Agreement or application to any party or circumstance shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement or the application of

said provision to such person or circumstance, other than those to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law.

(d) Whenever the singular number is used in this Joint Venture Agreement and when required by the context, the same shall include the plural, and the pronoun shall include the masculine, feminine, and neuter genders and the word "person" shall include corporation, firm, partnership or other form of association.

(e) The Joint Venture Agreement and all matters relating to the parties as Partners of the Joint Venture or the business of the Joint Venture not covered by this Agreement shall be governed by the laws of the State of Alabama.

IN WITNESS WHEREOF, the undersigned Partners have hereunto executed this Agreement this 22 day of December, 1986.

David F. Byers  
David F. Byers

James D. Hutton  
James D. Hutton

Jack L. Shewmake  
Jack L. Shewmake

STATE OF ALABAMA     )  
JEFFERSON COUNTY    )

I, the undersigned, hereby certify that David F. Byers, whose name 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 such instrument, he executed the foregoing voluntarily on the day the same bears date.

Given under my hand and official seal of office this 22nd day of December, 1986.

Mary Douglas Hutton  
Notary Public

My Commission Expires: 12/31/87

NOTARY  
PUBLIC

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STATE OF ALABAMA     )  
JEFFERSON COUNTY    )

I, the undersigned, hereby certify that James D. Hutton, whose name 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 such instrument, he executed the foregoing voluntarily on the day the same bears date.

Given under my hand and official seal of office this 22<sup>nd</sup> day of December, 1986.

Mary Douglas Hawkins  
Notary Public

My Commission Expires: 12/9/87

STATE OF ALABAMA     )  
JEFFERSON COUNTY    )

I, the undersigned, hereby certify that Jack L. Shewmake, whose name 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 such instrument, he executed the foregoing voluntarily on the day the same bears date.

Given under my hand and official seal of office this 21<sup>st</sup> day of December, 1986.

Mary Douglas Hawkins  
Notary Public

My Commission Expires: 12/9/87

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EXHIBIT A

All that part of the South  $\frac{1}{2}$  of the NW  $\frac{1}{4}$  of the SE  $\frac{1}{4}$  of Section 3, Township 21 South, Range 3 West, lying North of Bermuda Lake Estates, First Sector, as recorded in Map Book 9, Page 98, in the Office of the Judge of Probate, Shelby County, Alabama.

ALSO:

All that part of the South  $\frac{1}{2}$  of the NE  $\frac{1}{4}$  of the SE  $\frac{1}{4}$  of Section 3, Township 21 South, Range 3 West, lying West of the Southern Gas Line Right of Way, as recorded in Deed Book 90, Pages 333 and 445, and North of Bermuda Hills, Second Sector, Fourth Addition, as recorded in Map Book 9, Page 78, in the Office of the Judge of Probate, Shelby County, Alabama.

ALSO:

All of the SW  $\frac{1}{4}$  of the SE  $\frac{1}{4}$  of Section 3, Township 21 South, Range 3 West, lying South of Bermuda Lake Estates, First Sector, as recorded in Map Book 9, Page 98, in the Probate Office of Shelby County, Alabama.

SUBJECT TO:

1. Taxes for the current year 1987 which are not due and payable until October 1, 1987.
2. Easements to Southern Natural Gas Corp., as recorded in Volume 90, Page 445 and Volume 90, Page 333.
3. Easements to Plantation Pipe Line Co., as recorded in Volume 212, Page 635; Volume 112, Page 364; and Volume 112, Page 280.
4. Easements to Alabaster Water & Gas Board, as recorded in Volume 278, Page 391 and Volume 278, Page 387.
5. Right of Way granted to Shelby County, Alabama, as recorded in Volume 280, Page 340.
6. Right of Way granted to Alabama Power Company by instrument(s) recorded in Volume 310, Page 213 and Volume 310, Page 215.
7. Right of Way granted to South Central Bell Telephone Company by instrument(s) recorded in Book 337, Page 241 and Book 27, Page 93.

RECORDING FEES

Recording Fee \$ 72.50  
Index Fee 1.00  
TOTAL \$ 73.50

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

1986 DEC 23 AM 8:19

*Thomas W. Henderson, Jr.*  
JUDGE OF PROBATE

