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Balch & Bingham
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DECLARATION
OF
PROTECTIVE COVENANTS
OF
TRACE CROSSINGS (BUSINESS)

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EXHIBIT A -- Description of Trace Crossings Property

STATE OF ALABAMA

COUNTIES OF JEFFERSON
AND SHELBY

DECLARATION OF PROTECTIVE COVENANTS
OF TRACE CROSSINGS (BUSINESS)

KNOW ALL MEN BY THESE PRESENTS, That:

WHEREAS, The HARBERT-USR REALTY JOINT VENTURE, an Alabama General Partnership (herein referred to as "DEVELOPER"), has heretofore acquired the fee title interest in, or an option on, the land and real property described in Exhibit "A", annexed hereto and made a part hereof, said land being situated in Jefferson and Shelby Counties, Alabama, and referred to herein as "Trace Crossings Property"; and

WHEREAS, DEVELOPER intends to form a planned development (to be known as "Trace Crossings") on the Trace Crossings Property consisting of commercial, residential, recreational and other areas; and

WHEREAS, DEVELOPER has caused the TRACE CROSSINGS BUSINESS ASSOCIATION, INC. to be formed for the purpose of providing a non-profit organization to serve as representative of DEVELOPER and owners of any part of Trace Crossings Property which hereafter is made subject to these protective covenants (herein collectively referred to as "Restrictions") with respect to: the assessment, collection and application of all charges imposed hereunder; the enforcement of all covenants contained herein and all liens created hereby; the creation, operation, management and maintenance of the facilities and services referred to hereafter and such other purposes described in its charter; and

WHEREAS, DEVELOPER may desire to subject, from time to time, portions of the Trace Crossings Property intended for commercial, industrial, business and related development to this Declaration.

NOW, THEREFORE, DEVELOPER does hereby proclaim, publish and declare that any part of the Trace Crossings Property which becomes subject to these Restrictions shall be held,

conveyed, hypothecated or encumbered, rented, used, occupied and improved subject to this Declaration, which shall run with the land and shall be binding upon DEVELOPER and upon all parties having or acquiring any right, title or interest in any part of Trace Crossings Property which is subject to this Declaration. **THE RESTRICTIONS CONTAINED HEREIN SHALL NOT APPLY TO OR AFFECT ANY TRACE CROSSINGS PROPERTY WHICH IS NOT SUBJECTED SPECIFICALLY BY WRITTEN INSTRUMENT TO THIS DECLARATION.**

ARTICLE I

MUTUALITY OF BENEFIT AND OBLIGATION

The Restrictions set forth herein are made for the mutual and reciprocal benefit of each and every part of Trace Crossings Property subjected to the Restrictions (sometimes referred to as "Property" or "Member's Property") and are intended to create mutual, equitable servitudes upon each such part of the Property and in favor of each and all such parts of the Property therein, to create reciprocal rights between the respective owners and future owners of such Property; and to create a privity of contract and estate between the grantees of said Property, their heirs, successors and assigns. The Restrictions do not apply to or affect any part of the Trace Crossings Property which is not subjected specifically by written instrument to this Declaration. All Member's Property shall be held, transferred, sold, conveyed, used, leased, occupied, mortgaged or otherwise encumbered subject to all the terms and provisions of this Declaration applicable to Member's Property, including, but not limited to, the lien provisions set forth in Section 10.1.

ARTICLE II

ARCHITECTURAL COMMITTEE; ARCHITECTURAL CONTROL

SECTION 2.1 Architectural Committee. The Business Architectural Committee (herein the "Architectural Committee") shall be composed of at least three (but not more than five) individuals designated and redesignated from time to time (i) by DEVELOPER until control of

the Architectural Committee is specifically delegated by the DEVELOPER to the TCBA, and (ii) by the TCBA after delegation of such control. Delegation of control of the Architectural Committee from the DEVELOPER to the TCBA shall be evidenced by an instrument signed by the DEVELOPER and filed for record in the Probate records of Jefferson and Shelby Counties, Alabama. The delegation of such control of the Architectural Committee shall not be tied to the transfer of control of the TCBA from the DEVELOPER to the Class A members of the TCBA, but rather shall not occur until the DEVELOPER has sold all property described on Exhibit "A" hereto, or such sooner time as the DEVELOPER shall determine.

Except as hereinafter provided, the affirmative vote of a majority of the membership of the Architectural Committee shall be required in order to adopt or promulgate any rule or regulation, or to make any findings, determinations, ruling or order, or to issue any permit, authorization or approval pursuant to directives or authorizations contained herein. With regard to review of plans and specifications as set forth in this Article II, however, and with regard to all other specific matters (other than the promulgation of rules and regulations) as may be specified by resolution of the entire Architectural Committee, each individual member of the Architectural Committee shall be authorized to exercise the full authority granted herein to the Architectural Committee. Any approval by one such member of any plans and specifications submitted under this Article II, or the granting of any approval, permit or authorization by one such member in accordance with the terms hereof, shall be final and binding. Any disapproval, or approval based upon modification or specified conditions by one such member shall also be final and binding.

2.2 Approval Required. No Structure as defined in Section 17.19 shall be commenced, erected, placed, moved on to or permitted to remain on any Parcel, nor shall any existing Structure upon any Parcel be altered in any way which materially changes the exterior appearance thereof, nor shall any new use be commenced on any Parcel, unless two sets of plans and specifications (including a description of any proposed new use) thereof

shall have been submitted to and approved in writing by the Architectural Committee. Such plans and specifications shall be in such form and shall contain such information as may be required by the Architectural Committee, but in any event shall include: (i) architectural plans, elevations and specifications showing the nature, kind, exterior color schemes, shape, height and materials of all Structures proposed for the Parcel; (ii) a site plan of the Parcel showing the location with respect to the particular Parcel (including proposed front, rear and side setbacks) of all Structures, the location thereof with reference to Structures on adjoining portions of the Property, and the number and location of all parking spaces and driveways on the Parcel; (iii) a grading plan for the particular Parcel; (iv) a drainage plan and (v) a plan for landscaping. All of said plans shall address the matters set forth in Article IV, as applicable.

2.3 Basis For Disapproval of Plans. The Architectural Committee shall have the right to disapprove any plans and specifications submitted hereunder because of any of the following:

- (a) Failure of such plans or specifications to comply with any of the Restrictions;
- (b) failure to include information in such plans and specifications as may have been reasonably requested;
- (c) objection to the exterior design, appearance or materials of any proposed Structure;
- (d) objections to the location of any proposed Structure upon any Parcel or with reference to other Parcels in the vicinity;
- (e) objection to the site plan, grading plan, drainage plan or landscaping plan for any Parcel;
- (f) objection to the color scheme, finish, proportions, style of architecture, materials, height, bulk, or appropriateness of any proposed Structure;

(g) objection to parking areas proposed for any Parcel on the grounds of
(i) incompatibility to proposed uses and Structures on such Parcel or (ii) the insufficiency of
the size of parking areas in relation to the proposed use of the Parcel;

(h) failure of plans to take into consideration the particular topography,
vegetative characteristics, natural environment and storm water runoff of the Parcel; or

(i) any other matter which, in the judgment of the Architectural Committee, would render the proposed Structure, Structures or uses inharmonious with the general plan of improvement of the Property or with Structures or uses located upon other Parcels in the vicinity.

Approval of any such plans shall terminate and be rendered void if construction is not begun within six (6) months after such approval unless such six (6) month period is extended by agreement with the Architectural Committee in which event the extended time period shall be applicable.

In any case where the Architectural Committee shall disapprove any plans and specifications submitted hereunder, or shall approve the same only as modified or upon specified conditions, such disapproval or qualified approval shall be accompanied by a statement of the grounds upon which such action was based. In any such case the Architectural Committee shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal can be prepared and submitted for approval.

THE SCOPE OF REVIEW BY THE ARCHITECTURAL COMMITTEE IS LIMITED TO APPEARANCE ONLY AND DOES NOT INCLUDE ANY RESPONSIBILITY OR AUTHORITY TO REVIEW FOR STRUCTURAL SOUNDNESS, COMPLIANCE WITH BUILDING OR ZONING CODES OR STANDARDS, OR ANY OTHER SIMILAR OR DISSIMILAR FACTORS.

2.4 Retention of Copy of Plans. Upon approval by the Architectural Committee of any plans and specifications submitted hereunder, a copy of such plans and specifications, as approved, shall be deposited for permanent record with the Architectural Committee, and a

copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same.

2.5 Rules of Architectural Committee; Effect of Approval and Disapproval; Time for Approval. The Architectural Committee may promulgate rules governing the form and content of plans to be submitted for approval or requiring specific improvements on Parcels, including, without limitation, exterior lighting and planting, and may issue statements of policy with respect to approval or disapproval of the architectural styles or details, or other matters, which may be presented for approval. Such rules and such statements of policy may be amended or revoked by the Architectural Committee at any time, and no inclusion in, omission from or amendment of any such rule or statement shall be deemed to bind the Architectural Committee to approve or disapprove any feature or matter subject to approval, or to waive the exercise of the Architectural Committee's discretion as to any such matter, but no change of policy shall affect the finality of any approval granted prior to such change. Approval for use on any Parcel of any plans or specifications shall not be deemed a waiver of the Architectural Committee's right, in its discretion, to disapprove such plans or specifications or any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use on any other Parcel or Parcels. Approval of any such plans and specifications relating to any Parcel, however, shall be final as to that Parcel and such approval may not be revoked or rescinded thereafter, provided, (i) that the Structures or uses shown or described on or in such plans and specifications do not violate any specific prohibition contained in the Restrictions, and (ii) that the plans and specifications, as approved, and any condition attached to any such approval, have been adhered to and complied with in regard to all Structures on and uses of the Parcel in question.

In the event that the Architectural Committee fails to approve or disapprove any plans and specifications as herein provided within thirty (30) days after submission thereof, the

same shall be deemed to have been approved, as submitted, and no further action shall be required.

2.6 Failure to Obtain Approval. If any Structure shall be altered, erected, placed or maintained upon any Parcel, or any new use commenced on any Parcel, otherwise than in accordance with plans and specifications approved by the Architectural Committee pursuant to the provisions of this Article II, such alteration, erection, maintenance or use shall be deemed to have been undertaken in violation of this Article II, and without the approval required herein, and, upon written notice from the Architectural Committee, any such Structure so altered, erected, placed or maintained upon any Parcel in violation hereof shall be removed or realtered, and any such use shall be terminated, so as to extinguish such violation.

If fifteen (15) days after the notice of such a violation the Owner of the Parcel upon which such violation exists shall not have taken reasonable steps toward the removal or termination of the same, DEVELOPER or the TCBA shall have the right, through its agents and employees, to enter upon such Parcel and to take such steps as may be necessary to extinguish such violation and the cost thereof shall be a binding, personal obligation of such Owner as well as a lien (enforceable in the same manner as a mortgage) upon the Parcel in question. The lien provided in this Section 2.6 shall not be valid as against a bona fide purchaser (or bona fide mortgagee) of the Parcel in question unless a suit to enforce said lien shall have been filed in a court of record in Jefferson and/or Shelby County prior to the recordation among the Land Records of Jefferson and/or Shelby County of the deed (or mortgage) conveying the Parcel in question to such purchaser (or subjecting the same to such mortgage).

2.7 Certificate of Compliance. Upon completion of the construction or alteration of any Structure upon any Parcel in accordance with plans and specifications approved by the Architectural Committee, the Architectural Committee shall, upon written

request of the Owner thereof, issue a certificate of compliance in form suitable for recordation, identifying such Structure and the Parcel on which such Structure is placed, and stating that the plans and specifications, the location of such Structure and the use or uses to be conducted thereon have been approved and that such Structure complies with the requirements of the Committee. Preparation and recording of such certificate shall be at the expense of such Owner. Any certificate of compliance issued in accordance with the provisions of this Section 2.7 shall be prima facie evidence of the facts therein stated, and as to any purchaser or encumbrancer in good faith and for value, or as to any title insurer, such certificate shall be conclusive evidence that, as of the date of the certificate, all Structures on the Parcel, and the use or uses described therein comply with all the requirements of this Article II, and with all other requirements of this Declaration as to which the Architectural Committee exercises any discretionary or interpretive powers.

2.8 Inspection and Testing Rights. Any agent of DEVELOPER, TCBA or the Architectural Committee may at any reasonable time or times enter upon and inspect any Parcel and any improvements thereon for the purpose of ascertaining whether the maintenance of such Parcel and the maintenance, construction, or alteration of Structures thereon are in compliance with the provisions hereof; and neither DEVELOPER, TCBA nor the Architectural Committee nor any such agent shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection. Without limitation upon other inspection rights, in order to implement inspection and testing of sanitary sewer lines, each owner agrees to notify the Architectural Committee prior to its installation of the sanitary sewer service lines and to permit such inspection and testing thereof by the Architectural Committee both before and after backfill as is required by the Architectural Committee. Any such inspection shall be for the sole purpose of determining compliance with these Restrictions, and neither the making of any such inspection, nor the failure to make any such inspection, shall be relied upon by the Owner of a Parcel or any third persons or entities for

any purpose whatsoever; nor shall any such inspection obligate the DEVELOPER, the TCBA or the Architectural Committee to take any particular action based on the inspection.

2.9 Waiver of Liability. Neither the Architectural Committee nor any architect nor agent thereof, nor the TCBA, nor the DEVELOPER, nor any agent or employee of the foregoing, shall be responsible in any way for any failure of Structures to comply with requirements of this Declaration, although a certificate of compliance has been issued, nor for any defects in any plans and specifications submitted, revised or approved in accordance with the foregoing provisions, nor for any structural or other defects in any work done according to such plans and specifications, and all persons relying thereon or benefitting therefrom agree not to sue or claim against the entities and persons referred to in this Section 2.9 for any cause arising out of the matters referred to in this Section 2.9 and further agree to and do hereby release said entities and persons for any and every such cause.

ARTICLE III

ZONING AND SPECIFIC RESTRICTIONS

The Restrictions shall not be taken as permitting any action or thing prohibited by the applicable zoning laws, or the laws, rules or regulations of any governmental authority, or by specific restrictions imposed by any deed or lease. In the event of any conflict, the most restrictive provision of such laws, rules regulations, deeds, leases or the Restrictions shall be taken to govern and control.

ARTICLE IV

SITE DEVELOPMENT

SECTION 4.1 Site to be Staked Prior to Tree Cutting. After the plan for the Structure is approved, the site of the Structure must be staked out and such site approved

by the Architectural Committee before tree cutting is done. Existing vegetation on each Parcel shall be saved whenever it is practical to do so. All areas on site and outside the areas of disturbance shall be "corded off" with high visibility surveyor's flagging tape and no vegetation shall be removed from the corded areas and no materials may be stored over the roots of this vegetation without prior approval of the Architectural Committee. Removal of "underbrush" from the corded areas is expressly prohibited except on Architectural Committee approval. No tree may be cut or removed from any Parcel without consent of the Architectural Committee until the building plans, site plans, and site staking are approved by the Architectural Committee.

4.2 Erosion Control. Erosion control measures shall be taken by the Owner of a Parcel, or his contractors, to protect adjacent properties during construction on such Parcel and thereafter until the soil is stabilized on the Parcel. This may be accomplished by the use of temporary retention ponds, silt fencing, or other protective measures intended to intercept and filter the excess storm water runoff from the Parcel. All such erosion control measures, including slope stabilization, must be specified on the grading plan and must be approved by the Architectural Committee prior to commencement of grading activities.

Any storm water retention ponds created during construction on a Parcel shall not remain as permanent ponds after completion of construction unless so provided in the grading, site and landscaping plans submitted to and approved by the Architectural Committee.

4.3 Off-Street Parking. Each building erected on any Parcel shall be so located on such Parcel as to provide ample space on the remainder of the Parcel (exclusive of "green space" or non-buildable areas) for off-street parking for the convenience of occupants, employees, customers and visitors. Such parking space or areas must be maintained and used for parking purposes and not otherwise. All drives and parking areas shall be curbed and/or guttered as required to control storm water runoff. All off-street parking

and loading areas shall be set back a minimum of five (5) feet from the street right-of-way line except where the Architectural Committee shall determine that the specific conditions require a greater set back; provided, that in no event shall a lesser set back be allowed than that which is provided under applicable zoning laws.

4.4 Screening of Parking Lots, Loading Zones and Trash Removal Areas. The site and landscaping plans shall provide for screening of vehicle parking areas, loading zones and trash and garbage removal areas by the use of earth berms, fences, vegetation or other measures required and approved by the Architectural Committee.

4.5 Utility Lines and Appurtenances. All gas, water, sewer, telephone and electrical feeder and service lines shall be installed as underground service unless otherwise approved by the Architectural Committee. All transformer boxes, meters or other such fixtures shall be adequately screened with plants or other materials approved by the Architectural Committee; provided that no planting or screening devices shall be placed so as to obstruct the normal servicing of either transformers, telephone pedestals, or other utility hardware. To the extent of the interest of the Owner of a Parcel, the Owner of a Parcel will not erect or grant to any person, firm or corporation the right, license or privilege to erect or use or permit the use of overhead wires, poles, or overhead facilities of any kind for electrical or telephone service on said real estate (except such poles and overhead facilities as may be required at those places where distribution facilities enter and leave the particular area) without the prior written consent of the Architectural Committee. Nothing herein shall be construed to prohibit overhead street lighting or ornamental yard lighting, where serviced by underground wires or cables and approved as set forth in Section 4.10.

4.6 Connection Points For Utility Service Lines. To the extent of the interests of the Owner of each Parcel, such Owners agree to connect utility service lines (including, but not limited to, gas, water, sewer and electricity) at points designated by Developer.

4.7 Sanitary Sewer Service Lines. The material for sanitary sewer service lines must be approved by the Architectural Committee and cast iron or ductile lines may be required in some or all sections of the Property.

4.8 Landscaping. The final landscaping plan must be prepared by a professional landscape architect licensed by the State of Alabama to prepare planting designs. The landscape plan must be approved by the Architectural Committee prior to any site disturbance. The landscape plan for each Parcel shall indicate the proposed type, location, size and quantity of all plant materials to be planted on the Parcel. The Owner must faithfully execute the landscape plan as submitted to and approved by the Architectural Committee. If the Owner should fail to faithfully execute the landscape plan, the TCBA shall have the right to enter into a contract with a third party for the execution of the landscape plan as approved, and the cost thereof shall be a binding, personal obligation of the Owner as well as a lien (enforceable in the same manner as a mortgage) upon the Parcel in question. The lien provided in this Section 4.7 shall not be valid as against a bona fide purchaser (or bona fide mortgagee) of the Parcel in question unless a suit to enforce said lien shall have been filed in the appropriate Probate Office in Jefferson and/or Shelby County, Alabama prior to the recordation in such Probate Office of the deed (or mortgage) conveying the Parcel in question to such purchaser (or subjecting the same to such mortgage).

4.9 Colors; Architectural Styles. All exterior building materials must be of colors approved by the Architectural Committee. All architecture on each Parcel must be compatible with the "park-like" atmosphere of the Trace Crossings development and must be compatible with surrounding buildings.

4.10 Exterior Lighting. Exterior lighting plans must be set forth on the architectural or landscape plans for a Parcel, and must be approved by the Architectural Committee. Exterior lighting shall be "environmental type" which directs all light beams downward with no spillover light or glare emitted off-site and shall be compatible with

lighting used on other buildings in Trace Crossings; provided that such lighting shall be adequate to insure that both parking areas and building areas are safely lighted for their prescribed use and can be easily surveyed by security patrols.

ARTICLE V

COVENANTS FOR MAINTENANCE

SECTION 5.1 Keep Parcel in Repair; Liens. Each Owner shall keep all Parcels owned by him, and all improvements therein or thereon, in good order and repair, including the seeding, watering and mowing of all lawns, the pruning and cutting of all trees and shrubbery and the painting (or other appropriate external care) of all buildings and other improvements, all in a manner and with such frequency as is consistent with good property management. If, in the opinion of the TCBA any Owner fails to perform the duties imposed by the preceding sentence after fifteen (15) days' written notice from the TCBA to the Owner to remedy the condition in question, the TCBA shall have the right, through its agents and employees, to enter upon the Parcel in question and to repair, maintain, repaint and restore the Parcel or such improvements and the cost thereof shall be a binding, personal obligation of such Owner as well as a lien (enforceable in the same manner as a mortgage) upon the Parcel in question; provided, however, that after control of the TCBA has been given to the Class A members of the TCBA, the approval of 51% of the votes of Class A members of the TCBA will be required to continue to remedy a violation on a specific Parcel as provided above if the aggregate cost charged hereunder against a single Owner exceeds \$2,000 per calendar year, as may be adjusted upward annually, commencing January 1, 1988, in an amount not to exceed five percent (5%) of the maximum amount which could have been charged the preceding year. Any landscaping approved by the Architectural Committee cannot be changed pursuant to this Section 5.1.

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5.2 Priority of Lien. The lien provided in Section 5.1 hereof shall not be valid as against a bona fide purchaser (or bona fide mortgagee) of the Parcel in question unless said lien shall have been filed in the appropriate Probate Office in Jefferson and/or Shelby County, Alabama prior to the recordation in such Probate Office of the deed (or mortgage) conveying the Parcel in question to such purchaser (or subjecting the same to such mortgage).

ARTICLE VI

GENERAL COVENANTS AND RESTRICTIONS

SECTION 6.1 General Prohibitions. Without the prior written approval of the Architectural Committee:

6.1.1 No previously approved Structure on any Parcel shall be used for any purpose other than that for which it was originally designed (such as, but not limited to the following general uses, which are set forth only by way of example and do not constitute a prior approval of the Architectural Committee as to any specific changes: office building may be used by other entities requiring space for office purposes; small retail store may be used for other retail establishments; restaurants shall only be used as dining facilities; parking lots shall only be used for parking, and not for new or used car sale areas; store-front walkways shall be used for pedestrian walkways only, and not for sidewalk sale areas, vending machine locations, or for shopping cart storage areas (whether temporary or permanent), etc.

6.1.2 No Parcel shall be split, divided, or subdivided for sale, resale, gift, transfer or otherwise;

6.1.3 To the extent of the interest of the Owner of a Parcel, no facilities, including poles and wires, for the transmission of electricity, telephone messages and the like shall be placed or maintained above the surface of the ground of any Parcel and no external

or outside antennas of any kind shall be maintained except on the rear portion of the Parcel as approved by the Architectural Committee; and

6.1.4 No boat, boat trailer, house trailer, trailer, motor home or any similar items shall be stored in the open on any Parcel for a period of time in excess of twenty-four (24) hours.

6.2 Preservation of Trees. No tree having a diameter of six (6) inches or more (measured from a point two feet above ground level) shall be removed from any Parcel without the express written authorization of the Architectural Committee. This Section 6.2 shall be read in conjunction with Section 4.1, and the provisions of both Sections, where applicable, shall be observed prior to any tree cutting. The Architectural Committee, in its discretion, may adopt and promulgate rules and regulations regarding the preservation of trees and other natural resources and wildlife upon the Property. If it shall deem it appropriate, the Architectural Committee may mark certain trees, regardless of size, as not removable without written authorization. In carrying out the provisions of this Section 6.2, the DEVELOPER, the TCBA and the Architectural Committee and the respective agents of each may come upon any Parcel during reasonable hours for the purpose of inspecting or marking trees or in relation to the enforcement and administration of any rules and regulations adopted and promulgated pursuant to the provisions hereof. Neither TCBA, nor the Architectural Committee, nor DEVELOPER, nor their respective agents shall be deemed to have committed a trespass or wrongful act by reason of any such entry or inspection.

6.3 Animals. No birds, livestock, animals or insects shall be kept or maintained on any Parcel without the express written consent of the Architectural Committee, except for ordinary domestic pets on Parcels used for apartment or other residential purposes. This Section 6.3 shall not be construed as allowing any activity which is otherwise prohibited by applicable zoning or other laws.

6.4 Signs. No sign or other advertising device of any nature shall be placed upon any Parcel except as provided herein. The Architectural Committee may, in its discretion, adopt and promulgate rules and regulations relating to signs which may be employed. Signs and other advertising devices may be erected and maintained upon any portion of the Property zoned or designated for industrial or commercial uses if approved by the Architectural Committee, as to the number of signs, and their color, location, nature, size and other characteristics of such signs or devices.

6.5 Temporary Structures. No temporary building, trailer, garage or building in the course of construction or other temporary structure shall be used, temporarily or permanently, as a residence or temporary housing or the like on any Parcel. If approved by the Architectural Committee, such a structure may be used as a construction office, storage facility, or security station during construction or other special purpose.

6.6 Accumulation of Refuse. No lumber, metals or bulk materials shall be kept, stored, or allowed to accumulate on any Parcel, except building materials during the course of construction of any approved Structure. No harmful or noxious materials shall be stored, either inside any Structure, or outside any Structure on any Parcel, if said materials pose any significant threat to public health and safety or to individuals employed or living within or in proximity to such Structures. No refuse, trash or garbage shall be kept, stored, or allowed to accumulate on any Parcel, except between scheduled pick-ups and in accordance with the following:

If trash or other refuse is to be disposed of by being picked up and carried away on a regular and recurring basis, such trash and other refuse shall be kept inside the building or in sanitary containers such as dumpsters. All trash and garbage containers shall be screened in such a manner so that they cannot be seen from adjacent and surrounding property, and as approved by the Architectural Committee. All trash and garbage containers shall be kept in a clean and sanitary

condition. The Architectural Committee, in its discretion, may adopt and promulgate reasonable rules and regulations relating to the size, shape, color and type of containers permitted and the manner of storage and screening of the same on the Property.

6.7 Pipes. To the extent of the interest of the Owners of a Parcel, no water pipe, gas pipe, sewer pipe or drainage pipe shall be installed or maintained on any Parcel above the surface of the ground, except hoses and movable pipes used for irrigation purposes. Meters and valves for utilities shall be located underground, if feasible. If such meters and valves must be placed above ground, they shall be located at points approved in writing by the Architectural Committee, and proper screening shall be required.

6.8 Mining. To the extent of the interest of the Owner of a Parcel, and except for construction approved under Article II, no Parcel shall be used for the purpose of boring, mining, quarrying, exploring for or removing gas, coal, oil or other hydrocarbons, sulfur or other minerals, gravel or earth.

6.9 Maintenance of Hedges and Plants. The TCBA shall have the right, but not the obligation, to enter upon any Parcel and trim or prune, at the expense of the Owner (subject to any applicable limitations set forth in Section 5.1), any hedge or other planting which in the opinion of the TCBA, by reason of its location upon the Parcel or the height to which it is permitted to grow, is unreasonably detrimental to the adjoining property or obscures the view of street traffic or is unattractive in appearance; provided, however, that the Owner shall be given fifteen (15) days' prior written notice of such action. This section 6.9 shall not be construed as imposing any obligation or responsibility upon the TCBA to take any action whatsoever with regard to hedges or other plantings.

6.10 Screening of Rooftop Fixtures and Equipment. All rooftop vents, plumbing and mechanical and electrical equipment located on any Parcel must be screened in a manner

so as not to be visible from adjoining streets or properties, such screening to be approved by the Architectural Committee.

6.11 Outside Burning. Outside or open burning of trash, refuse or other material upon any Parcel is prohibited, except for burning of trees and brush during the clearing of a Parcel and the initial construction of improvements on such Parcel (to the extent allowed by law).

ARTICLE VII

WATERFRONT AREAS AND WATERWAYS

SECTION 7.1 Construction Along Waterway. Any Parcel which shall abut upon any lake, stream, river, canal or other waterway (hereinafter collectively referred to as "Waterways") shall be subject to the following additional restrictions:

7.1.1 No wharf, bulkhead, or other structure or obstruction shall be built or maintained upon any waterfront Parcel or into or upon any Waterway on the Property or adjacent thereto except with the specific written approval of the Architectural Committee.

7.1.2 Except with prior written approval of the TCBA, no boat canal shall be constructed upon any Parcel nor shall any facility or device be constructed or installed upon any Parcel which shall in any way alter the course of or natural boundaries of any Waterway or which shall involve or result in the removal of water from any Waterway.

7.1.3 Except with prior written approval of the TCBA, no boats, boat railways, launching facilities or any similar type of structures or equipment shall be installed, constructed or maintained upon any Parcel, nor shall any boat or boat trailer be stored on any Parcel in such manner as to be visible from surrounding properties or from the abutting Waterway.

7.2 No Boats on Waterway. No boat of any kind shall be operated upon any Waterway on the Property without the prior written approval of the TCBA. Further, if such

approval is granted, such operation shall conform to all rules and regulations promulgated by the TCBA concerning the use of boats.

7.3 Trash and Refuse. No garbage, trash or other refuse shall be dumped into any Waterway on the Property.

7.4 Use of Waterway; No Liability of TCBA. No consent or authority to use any Waterway on the Property is granted or implied by these Restrictions and such use may be prohibited or unauthorized. Notwithstanding anything in this Declaration to the contrary, the use, construction or development of any Waterway shall be at the sole risk and liability of the user or developer, and no approval of any structure or use relating to any Waterway by the TCBA shall impose any liability on the TCBA to any person or entity for damages, injury or death relating to any such use, structure or Waterway. It is understood that the authority of the Architectural Committee does not include the authority to review any use or structure for matters relating to structural soundness and/or safety.

ARTICLE VIII

EASEMENTS

SECTION 8.1 Drainage Easements. Except with prior written permission from DEVELOPER, or (when so designated by DEVELOPER) from the Architectural Committee, drainage flow shall not be obstructed nor be diverted from drainage swales, storm sewers and/or utility easements as designated herein, or as may hereafter appear on any plat of record in which reference is made to these Restrictions. DEVELOPER may cut drainways for surface water wherever and whenever such action may appear to DEVELOPER to be necessary in order to maintain reasonable standards of health, safety and appearance; provided, however, that DEVELOPER's right to cut drainways on an Owner's Property shall terminate when the principal structure and approved landscaping on such property have been completed. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary to provide

economical and safe utility installation and to maintain reasonable standards of health and appearance. The provisions hereof shall not be construed to impose any obligation upon DEVELOPER to cut such drainways.

8.2 Grading. DEVELOPER may at any time make such cuts and fills upon any Parcel or other part of the Trace Crossings Property and do such grading and moving of earth as, in its judgment, may be necessary to improve or maintain the streets in or adjacent to the Trace Crossings Property and to drain surface waters therefrom; and may assign such rights to Jefferson County, Shelby County or to the City of Hoover, Alabama; provided however, that after plans for the principal Structure upon a Parcel shall have been approved by the Architectural Committee as provided herein, the rights of DEVELOPER under this Section 8.2 shall terminate with respect to all parts of such Parcel other than the easement area thereof, except that DEVELOPER or any such municipal or public authority shall thereafter have the right to maintain existing streets and drainage structures.

ARTICLE IX

ASSESSMENT OF ANNUAL CHARGE

SECTION 9.1 Assessment. For the purpose of providing funds for use as specified in Article X hereof, the Board shall in each year, commencing with the year 1987, assess against the Assessable Property a charge (which shall be uniform with respect to all Assessable Property) equal to a specified number of cents (not in excess of twenty-five cents) for each One Hundred Dollars (\$100) of the then current "Market Valuation", as hereinafter defined, of the Assessable Property. In making each such assessment, the Board shall separately assess each Parcel based upon its Market Valuation, and each such Parcel shall be charged with and subject to a lien for the amount of such separate assessment which shall be deemed the "Annual Charge" with respect to such Parcel. Provided however, that until the Class A Members are entitled to elect a majority of the Board of the TCBA, the maximum annual

charge per Parcel shall not exceed \$2000.00 as may be adjusted upward annually, commencing January 1, 1988, in an amount not to exceed ten percent (10%) of the maximum amount (of such \$2000.00, as escalated) which could have been charged the preceding year.

9.2 Market Valuation. As used herein, the term "Market Valuation" shall mean:

9.2.1 the highest market valuation (or fair market value or "FMV") placed on land and permanent improvements in each year for Jefferson or Shelby County (whichever is applicable) or for Alabama State real estate tax purposes, whichever may be higher, as determined in such manner as may from time to time be provided by applicable law, regardless of any decrease of such valuation during such year by reason of protest, appeal or otherwise;

9.2.2 if the applicable County and the State shall ever cease to impose real estate taxes, then said term shall mean in each year thereafter the highest valuation placed on land and permanent improvements during the last year when either shall have imposed real estate taxes, determined as provided in Section 9.2.1.

9.3 Date of Commencement of Annual Charge. As soon as may be practical in each year, the TCBA shall send a written bill to each Member (and/or to the non-public lessee of a Parcel owned by a governmental entity) stating (i) the Market Valuation of each Parcel owned by such Member as the same appears on the appropriate public record; (ii) the number of cents per One Hundred Dollars (\$100) of such Market Valuation assessed by the Board as the Annual Charge for the year in question, (iii) the amount of the Annual Charge assessed against each such Parcel (as limited in Section 9.1 during the time when the Class B Members may elect a majority of the Board of the TCBA), stated in terms of the total sum due and owing as the Annual Charge, and (iv) that unless the Member (or such lessee) shall pay the Annual Charge within thirty (30) days following the date of receipt of the bill the same shall be deemed delinquent and will bear interest at the rate of twelve percent (12%) per annum until paid.

9.4 Effect of Nonpayment of Assessments; Remedies of TCBA. If the Member shall fail to pay the Annual Charge within sixty (60) days following receipt of the bill referred to in Section 9.3 hereof, and within thirty (30) days after additional written notice that the Member is delinquent in his payment, in addition to the right to sue the Member for a personal judgment, the TCBA shall have the right to enforce the lien hereinafter imposed to the same extent, including a foreclosure sale and deficiency decree, and subject to the same procedures, as in the case of mortgages under applicable law, and the amount due by such Member shall include the Annual Charge, as well as the cost of such proceedings, including a reasonable attorney's fee, and the aforesaid interest. In addition, the TCBA shall have the right to sell the property at public or private sale after giving notice to the Member (by registered mail or by publication in a newspaper of general circulation in the County where the Parcel is situated at least once a week for three successive weeks) prior to such sale.

9.5 Certificate of Payment. Upon written demand by a Member, the TCBA shall within a reasonable period of time issue and furnish to such Member a written certificate stating that all Annual Charges (including interest and costs, if any) have been paid with respect to any specified Parcel as of the date of such certificate, or if all Annual Charges have not been paid, setting forth the amount of such Annual Charges (including interest and costs, if any) due and payable as of such date. The TCBA may make a reasonable charge for the issuance of such certificates which must be paid at the time that the request for such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the TCBA and any bona fide purchaser of, or lender on, the Parcel in question.

ARTICLE X

IMPOSITION OF CHARGE AND LIEN UPON PROPERTY

SECTION 10.1 Creation of Lien for Assessments. All Member's Property shall be subject to a continuing lien for assessments levied by the TCBA in accordance with the provisions of this Declaration. The Annual Charge together with interest thereon and the costs of collection thereof including reasonable attorney's fees) as herein provided, shall be a charge on and shall be a continuing lien upon the Member's Property against which each such assessment or charge is made.

10.2 Submission of Portions of Trace Crossings Property. DEVELOPER may desire to subject from time to time portions of the Trace Crossings Property intended for commercial, industrial, business and related development to this Declaration in accordance with Article XV, and the same will thereby be subjected to this Declaration as Member's Property for the purpose, among others, of submitting such property to the lien described in Section 10.1. Except as provided herein, Member's Property shall hereafter be held, transferred, sold, conveyed, used, leased, occupied, mortgaged or otherwise encumbered subject to all the terms and provisions of this Declaration applicable to Member's Property, including, but not limited to, the lien provisions set forth in Section 10.1.

10.3 Personal Obligation of Members. Each Member, by acceptance of a deed or other conveyance to Member's Property, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the TCBA, or to cause to be paid to the TCBA, the Annual Charges. Each such assessment, together with interest and costs of collection, including reasonable attorney's fees, in addition to being a lien on the property as set forth in Section 10.1 above, also shall be the personal obligation of the person or entity who was the owner of such Member's Property at the time when the assessment fell due; provided, however, that in the case of a Parcel owned by a

governmental entity which is leased to a private person or entity, the lessee shall also be responsible for the payment of the Annual Charge on such Parcel.

10.4 Subordination of Lien to Mortgages. The lien of any assessment or charge authorized herein with respect to Member's Property is hereby made subordinate to the lien of any bona fide mortgage on such member's Property if, but only if, all assessments and charges levied against such Member's Property falling due on or prior to the date such mortgage is recorded has been paid. The sale or transfer of any Member's Property pursuant to a mortgage foreclosure proceeding or a proceeding in lieu of foreclosure or the sale or transfer of such Member's Property pursuant to a sale under power contained in a mortgage on such property shall extinguish the lien for assessments falling due prior to the date of such sale, transfer or foreclosure, but the TCBA shall have a lien on the proceeds of such sale senior to the equity of redemption of the mortgagor. The foregoing subordination shall not relieve a Member whose Member's Property has been mortgaged of his personal obligation to pay all assessments and charges falling due during the time when he is the owner of such property. The Board may at any time, either before or after the mortgaging of any Member's Property, waive, relinquish or quitclaim in whole or in part the right of the TCBA to assessments and other charges collectible by the TCBA with respect to such property coming due during the period while such property is or may be held by a mortgagee or mortgagees pursuant to such sale or transfer.

ARTICLE XI

USE OF FUNDS

SECTION 11.1 Use of Funds. The TCBA shall apply all funds received by it pursuant to these Restrictions, and from any other source, reasonably for the benefit of property owned by TCBA Members and specifically to the following uses, unless other uses are approved by 51% of the votes of Class A Members of the TCBA, and with the understanding

that, at the TCBA's discretion, funds shall be applied to operations and maintenance before being applied to capital improvements: repayment of principal and interest of any loans of the TCBA, the costs and expenses of the TCBA for the benefit of the Property, Owners and Residents by devoting the same to the acquisition, construction, reconstruction, conduct, alteration, enlargement, laying, renewal, replacement, repair, maintenance, operation and subsidizing of such of the following as the Board, in its discretion, may from time to time establish or provide: any or all projects, services, facilities, studies, programs, systems and properties relating to: parks, recreational facilities or services; walkways, curbing, gutters, sidewalks, landscaping; directional and informational signs; streets or roads; street, road and highway lighting, signal and sign facilities; facilities or arrangement for facilities for the collection, treatment and disposal of garbage, trash and refuse; facilities for the fighting and preventing of fires; traffic engineering programs, traffic signals and parking facilities; lakes and dams; beautification projects within the Trace Crossings Property; holiday decorations; TCBA business or social functions; professional fees; casualty, errors and omissions and liability insurance, and such other insurance as may be required by law or otherwise deemed appropriate by the Board; facilities and provisions for the security of Members, members' Property, Residents and TCBA Land; and general maintenance and clean-up.

11.2 Obligations of TCBA with Respect to Funds. The TCBA shall not be obligated to spend in any calendar year all the sums collected in such year by way of Annual Charges or otherwise, and may carry forward as surplus any balances remaining; nor shall the TCBA be obligated to apply any such surpluses to the reduction of the amount of the Annual Charge in the succeeding year, but may carry forward from year to year such surplus as the Board in its absolute discretion may determine to be desirable for the greater financial security of TCBA and the effectuation of its purposes. The TCBA does not assure that the services described in Section 11.1 will be provided and nothing herein shall obligate the TCBA or its Directors to undertake to provide such services. The TCBA shall provide to all

Members of the TCBA an annual accounting of funds expended and balances remaining within one hundred twenty (120) days after the end of any calendar year, such accounting to be at the TCBA's expense.

11.3 Authority of TCBA to Contract. The TCBA shall be entitled to contract, subject to the last sentence of Section 11.4, with any corporation, firm or other entity for the performance of the various undertakings of the TCBA specified in Section 11.1, and such other undertakings as may be approved by 51% of the votes of Class A Members of the TCBA, and the performance by any such entity shall be deemed the performance of the TCBA hereunder.

11.4 Authority of TCBA to Borrow Money. The TCBA shall be entitled to borrow money for the uses specified in Section 11.1, or other uses if approved by 51% of the votes of the Class A members of the TCBA, up to an outstanding principal balance of \$15,000. Any borrowing over such amount shall require the approval of 51% of the votes of Class A Members of the TCBA. Further, the TCBA shall not incur outstanding contractual and debt obligations exceeding an aggregate of \$25,000 at any given point in time (not including any prospective or actual liability arising out of a lawsuit not based on unpaid accounts).

11.5 Authority of TCBA to make Capital Expenditures. The TCBA shall be entitled to make capital expenditures for the uses specified in Section 11.1 or other uses as may be approved as provided therein, up to an amount not to exceed \$25,000, as limited by the last sentence in Section 11.4. Any capital expenditure in excess of \$25,000 shall require the approval of 51% of the Class A Members of the TCBA.

11.6 CPI Adjustments. The dollar limitations in Sections 11.4 and 11.5 shall be increased effective January of each year (the "Adjustment Year"), beginning January, 1988, to reflect the percentage increase in the Revised Consumer Price Index -- All Items and Major

Group Figures for Urban Wage Earners and Clerical Workers (1967 = 100) (herein the "CPI") from the CPI for January, 1987 to the CPI for January of the respective Adjustment Year.

ARTICLE XII

RIGHTS OF ENJOYMENT IN COMMUNITY FACILITIES

SECTION 12.1 Community Facilities. DEVELOPER may convey or cause to be conveyed to the TCBA, subsequent to the recordation of this Declaration, certain tracts of land within the Trace Crossings Property for park and other recreational and related purposes. The conveyances may restrict the uses of the property being conveyed. Such tracts, together with such other parts of the TCBA land as the Board may by resolution from time to time hereafter designate for use by Members and Residents are sometimes hereinafter collectively referred to as "Community Facilities".

12.2 Easement of Enjoyment of Community. Every Owner, by reason of such ownership, shall have a right and easement of enjoyment in and to all Community Facilities, and such easement shall be appurtenant to and shall pass with every Parcel upon transfer. All Residents who are not Members shall have a non-transferable privilege to use and enjoy all Community Facilities for so long as they are Residents within the defined meaning of that term. All such rights, easements, and privileges, however, shall be subject to the right of the TCBA to adopt and promulgate reasonable rules and regulations pertaining to the use of Community Facilities which shall enhance the preservation of such facilities, the safety and convenience of the users thereof, or which, in the discretion of the Board, shall serve to promote the best interests of the Owners and Residents, including the making available of certain Community Facilities to school children, with or without charge. The TCBA shall have the right to charge Owners and Residents reasonable admission and other fees in connection with the use of any Community Facility. In establishing such admission and other fees, the Board may, in its absolute discretion, establish reasonable classifications of Owners

and of Residents; such admission and other fees must be uniform within each such class but need not be uniform from class to class. The TCBA shall have the right to borrow money, subject to the limitations in Section 11.4, for the purpose of improving any Community Facility and, in aid thereof, to mortgage the same and the rights of any such mortgagee shall be superior to the easements herein granted and assured.

12.3 Suspension of Rights. The TCBA shall have the right to suspend the right of any Member (and the privilege of each Resident claiming through such Member) for any period during which the Annual Charge assessed under Article IX hereof remains overdue and unpaid, or in connection with the enforcement of any rules or regulations relating to such facilities in accordance with the provisions of this Article XII.

12.4 Right of TCBA to Convey. Notwithstanding the rights, easements and privileges granted under this Article XII, the TCBA shall nevertheless have the right and power to convey any property referred to in Section 12.1 hereof free and clear of all such rights, easements and privileges if such conveyance is to a public body for public use.

12.5 Restrictions and Easements Over Open Spaces. DEVELOPER will either create prior to or as a part of any conveyances to the TCBA easements and rights of way over and/or affecting the property conveyed to the TCBA including but not limited to easements relating to utilities, sewers, construction and roads. Any such conveyance to the TCBA by DEVELOPER shall be subject to all restrictions, easements, rights of way and agreements of record.

ARTICLE XIII

MEMBERSHIP AND VOTING RIGHTS

SECTION 13.1 General. The structure of the TCBA is contained in its Charter and by-laws. The matters discussed in Sections 13.2 to 13.5 are summaries of some of the provisions of the Charter of the TCBA. The Charter and by-laws of the TCBA cover each of these

matters, in addition to others, in greater detail, and should be consulted for a full explanation of the rights and obligations appurtenant to membership in the TCBA.

13.2 All Parcel Owner's Are Members of TCBA. Every owner of a Parcel constituting member's Property shall, by virtue of such ownership, be a Member of the TCBA. Membership shall be appurtenant to, and may not be separated from the ownership of any property which is Member's Property.

13.3 Classes of Membership. The classes of membership are contained in the Charter and by-laws of the TCBA.

(a) Class A Members shall be all persons owning one or more Commercial Parcels constituting Member's Property excepting those persons who are Class B Members; provided, that in the event a Commercial Parcel is submitted to a condominium form of ownership, the condominium as a whole shall be considered to be the only member for that Parcel. A Class B Member cannot be a Class A Member so long as it retains its Class B membership.

(b) Class B Members shall be the Harbert-USR Realty Joint Venture, an Alabama General Partnership, and any successor in ownership to all or part of the Developer's interest in Trace Crossings.

The Class B membership shall terminate at such time as (a) all the then Class B Members so designate in a writing delivered to the Association or (b) on December 31, 2010, whichever shall first occur; provided, that notwithstanding the foregoing, the Class B membership shall not terminate so long as the Developer shall own any undeveloped Parcel.

13.4 Voting Rights: Class B Members. Except on such matters as to which this Declaration, the Charter, or the By-Laws of the TCBA specifically require the votes of the Class A Members, and until December 31, 2010, or such earlier time as the Class B membership shall terminate, as provided herein, the Class B Members shall be vested with the sole voting rights in TCBA, and the Class A Membership shall have no voting rights.

13.5 Voting Rights: Class A Members. Subject to the provisions of Section 13.4, each Class A Member shall have one vote for each Parcel owned by such Member.

13.6 Conflict. In the event of a conflict between the terms of this Declaration and the Charter of the TCBA, the terms of the Charter shall control.

ARTICLE XIV

THE ADDITION OF OPEN SPACES

SECTION 14.1 Additions to Open Space. DEVELOPER, or such of its successors and assigns as shall have been specifically granted the right to submit additional property to this Declaration as set forth in this Article, may from time to time during the development of Trace Crossings, but on or before December 31, 2010, convey or cause to be conveyed additional property to the TCBA and such property shall become Open Spaces.

14.2 Permissible Conditions or Restrictions on Additional Open Space. Property conveyed to the TCBA as additional Open Spaces may be improved or unimproved land and may be subject to permanent or periodic flooding or may be land under water. The grantor may convey such additional Open Spaces subject to easements for the construction, installation, maintenance, repair, use and access of roadways, service roads, or utility sewer, or other public service facilities, and subject to the reserved right in favor of a person owning Trace Crossings Property for reasonable use and access to facilitate the development of such property and subject to other rights of way, easements, restrictions, and agreements of record.

ARTICLE XV

THE SUBMISSION OF ADDITIONAL MEMBER'S PROPERTY

SECTION 15.1 Submission of Additional Member's Property. DEVELOPER may at any time during the pendency of this Declaration add all or a portion of Trace Crossings

Property, along with any additional property now or hereafter acquired by Developer, to the Property which is covered by this Declaration. Additional member's Property may be submitted to the provisions of this Declaration by an instrument executed by DEVELOPER, its successors or assigns in the manner required for the execution of deeds. Such instrument shall:

15.1.1 refer to this Declaration stating the book or books of the records of Jefferson and/or Shelby County, Alabama, and the page numbers where this Declaration is recorded;

15.1.2 contain a statement that such Additional member's Property is conveyed subject to the provisions of this Declaration, or some specified part thereof (as limited by Section 16.4);

15.1.3 contain an exact description of such Additional Member's Property; and

15.1.4 such other or different covenants, conditions and restrictions as DEVELOPER shall, in its discretion, specify to regulate and control the use, occupancy and improvement of such Additional Member's Property.

Upon the recording of such instrument in the appropriate Probate Office of Jefferson and/or Shelby County, Alabama, such additional property shall be Member's Property and the owner or owners of such Member's Property shall thereupon be members of the TCBA.

15.2 All Member's Property Bears the Burdens and Enjoys the Benefits of this Declaration. Every person who is an owner of a fee interest in any portion of the Member's Property does by reason of taking such title agree to all of the terms and provisions of this Declaration (except as they may be modified in the deed to such Property, subject to the limitations in Section 16.4 hereof). All present and later added Member's Property is subject to the burdens and shall enjoy the benefits made applicable hereunder to Member's Property.

ARTICLE XVI

GENERAL

SECTION 16.1 Grantee's Acceptance. The grantee of any Parcel subject to the coverage of these Restrictions, by acceptance of the deed or other instrument conveying an interest in or title to, or the execution of a contract for the purchase thereof, whether from DEVELOPER or a subsequent owner of such Parcel, shall accept such deed or other contract upon and subject to each and all of these Restrictions herein contained.

16.2 Indemnity For Damages. Each and every Parcel Owner and future Parcel Owner, in accepting a deed or contract for any Parcel subject to these Restrictions, agrees to indemnify DEVELOPER for any damage caused by such Owner, or the contractor, agent, or employees of such Owner, to roads, streets, gutters, walkways or other aspects of public ways, including all surfacing thereon, or to water, drainage or storm sewer lines or sanitary sewer lines owned by DEVELOPER, or for which DEVELOPER has responsibility, at the time of such damage.

16.3 Severability. Every one of the provisions and restrictions is hereby declared to be independent of, and severable from the rest of the provisions and restrictions and of and from every other one of the provisions and restrictions and of and from every combination of the provisions and restrictions in this Declaration and shall in no way affect any of the other provisions or restrictions which shall remain in full force and effect.

16.4 Right of Developer to Modify Restrictions With Respect to Unsold Parcels. With respect to any unsold Parcel, DEVELOPER may include in any contract or deed hereinafter made or entered into such modifications and/or additions to these Restrictions as DEVELOPER in his discretion desires; provided, however, that these Restrictions may not be modified in any contract or deed to except such Parcel from the assessment provisions of Article IX or to lessen or extend the voting rights as provided in these Restrictions or in the Charter and by-laws of the TCBA.

16.5 Captions. The captions preceding the various sections, paragraphs and subparagraphs of these Restrictions are for the convenience of reference only, and none of them shall be used as an aid to the construction of any provision of the Restrictions. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

16.6 Effect of Violation on Mortgage Lien. No violation of any of these Restrictions shall defeat or render invalid the lien of any mortgage made in good faith and for value upon any portion of the Property; provided, however, that any mortgagee in actual possession, or any purchaser at any mortgagees' or foreclosure sale shall be bound by and subject to these Restrictions as fully as any other Owner of any portion of the Property.

16.7 No Reverter. No Restriction herein is intended to be, or shall be construed as, a condition subsequent or as creating a possibility of reverter.

16.8 Duration and Amendment. The Restrictions contained in this Declaration shall run with and bind the Property, shall inure to the benefit of and shall be enforceable by DEVELOPER, the TCBA, the Architectural Committee, and the Owner of any Commercial Parcel included in the Property, their respective legal representatives, heirs, successors and assigns until the 31st day of December in the year 2020, after which time said Restrictions shall be automatically extended for successive periods of ten years. This Declaration may not be amended in any respect (except with regard to the annexation of Additional member's Property) except by the execution of an instrument signed by not less than 75% of the Parcel Owners, which instrument shall be filed for recording in the Probate Offices of Jefferson and/or Shelby County, Alabama, or in such other place of recording as may be appropriate at the time of the execution of such instrument. After December 31, 2020, this Declaration may be amended and/or terminated in its entirety by an instrument signed by not less than 55% of the Parcel Owners which instrument shall be filed for recording in the Probate Offices of

Jefferson and/or Shelby County, Alabama, or in such other place of recording as may be appropriate at the time of the execution of such instrument.

16.9 Enforcement. In the event of a violation or breach of any of these Restrictions or any amendments thereto by any Owner, or employee, agent, or lessee of such Owner, the Owner(s) of Commercial Parcel(s), the TCBA, DEVELOPER (so long as it is a member of the TCBA), their successors and assigns, or any business party to whose benefit these Restrictions inure shall have the right to proceed at law or in equity to compel compliance with the terms and conditions hereof, to prevent the violation or breach of said Restrictions, to sue for and recover damages or other dues, or take all such courses of action at the same time, or such other legal remedy it may deem appropriate. No delay or failure on the part of an aggrieved party to initiate an available remedy set forth herein shall be held to be a waiver of that party or an estoppel of that party or of any other party to assert any right available to him upon the recurrence or continuation of said violation or the occurrence of a different violation.

Damages shall not be deemed adequate compensation for any breach or violation of any provision hereof, but any person or entity entitled to enforce any provision hereof shall be entitled specifically to relief by way of injunction as well as any other available relief either at law or in equity.

Any party to a proceeding who succeeds in enforcing a Restriction or enjoining the violation of a Restriction against a Parcel Owner may be awarded a reasonable attorney's fee against such Parcel Owner.

16.10 Certificate of Violation. In addition to any other rights or remedies available to the TCBA hereunder or at law or equity, the TCBA shall have the right to file in the Records of Jefferson and/or Shelby County, Alabama a Certificate or Notice of Violation of these Restrictions (which violation shall include, without limitation, nonpayment of the Annual Charges and/or failure to comply with architectural guidelines) upon failure of

a Parcel Owner to correct a violation of these Restrictions within thirty (30) days after written notice of the violation has been given by the TCBA to the Parcel Owner.

16.11 Interpretation by TCBA. The TCBA shall have the right to construe and interpret the provisions of this Declaration, and in absence of an adjudication by a court of competent jurisdiction to the contrary, its construction or interpretation shall be final and binding as to all persons or property benefited or bound by the provisions hereof.

16.12 Assignment by TCBA. The TCBA shall be empowered to assign its rights hereunder to any successor nonprofit membership corporation (herein referred to as the "Successor Corporation") and, upon such assignment the Successor Corporation shall have all the rights and be subject to all the duties of the TCBA hereunder.

16.13 No Waiver. The failure of any party entitled to enforce any of these Restrictions herein contained shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to such a violation or breach occurring prior or subsequent thereto; provided, however, that approval of plans pursuant to Article II shall be binding on any and all parties as a conclusive determination that such plans are in conformity with these Restrictions.

ARTICLE XVII

DEFINITIONS

SECTION 17.1 Assessable Property. That part of Trace Crossings Property which is subjected to these Restrictions except such part or parts thereof as may from time to time constitute "Exempt Property" as defined in Section 17.10.

17.2 Association or "TCBA". The Trace Crossings Business Association, Inc., its successors and assigns.

17.3 Association Land or TCBA Land. That part of Trace Crossings Property which may at any time hereafter be owned by the Association for so long as the Association or successor thereof may be the owner thereof.

17.4 Board. The Board of Directors of the Association.

17.5 Charter. The Articles of Incorporation of the Trace Crossings Business Association, Inc.

17.6 Commercial Parcel. Any unit, lot, part or parcel of Trace Crossings Property designed, designated or used for a commercial or business purpose or use including apartment projects and residential or business condominiums located on a parcel or parcels which are subjected to this Declaration.

17.7 Declaration. This Declaration of Protective Covenants of Trace Crossings (Business) applicable to Member's Property which shall be recorded in the appropriate Probate Records of Jefferson and Shelby County, Alabama, as the same may from time to time be supplemented or amended in the manner described therein.

17.8 Deed. Any deed, assignment, lease, or other instrument conveying fee title or a leasehold interest in any part of Trace Crossings Property subjected to these Restrictions.

17.9 Developer. Harbert-USR Realty Joint Venture, an Alabama General Partnership, its successors and assigns.

17.10 Exempt Property. Shall mean and refer to the following portions or parts of the Property:

- (i) all land owned by the United States, the State of Alabama, Jefferson County, Shelby County, or any instrumentality or agency of any such entity, for so long as (a) any such entity or any such instrumentality or agency shall be the owner thereof, and (b) such land is being used or held for public purposes (land which is owned by any such entities

and leased to non-public persons or entities shall not be exempt during the period of lease to such non-public persons or entities);

(ii) all land owned by Trace Crossings Business Association, Inc. ("TCBA") (or a "Successor Corporation" as defined in Section 16.12 hereof) for so long as TCBA (or such Successor Corporation) shall be the owner thereof;

17.11 Member. A person or other entity who is a record owner of Member's Property.

17.12 Member's Property. That portion of Trace Crossings Property which shall have been submitted to this Declaration for the purpose of creating a lien for assessments in favor of TCBA.

17.13 Open Spaces or Common Areas. Trace Crossings Property which is conveyed to the Association by the owners or Developers of Trace Crossings or a part thereof and which is designated as an open space or area.

17.14 Owner. The Owner of Member's Property.

17.15 Parcel. A Commercial Parcel as defined in Section 17.6.

17.16 Property or Subject Property or Member's Property. That part of Trace Crossings Property subjected to this Declaration. The term "Property" shall also include each such new parcel of land at the time that the same is subjected to the Declaration.

17.17 Resident. Any persons or persons occupying or leasing Member's Property.

17.18 Restrictions. The covenants, agreements, easements, charges and liens created or imposed by this Declaration.

17.19 Structure. Any thing or device [other than trees, shrubbery (less than two (2) feet high if in the form of a hedge), and landscaping], the placement of which upon any Parcel may affect the appearance of such Parcel, including by way of illustration and not limitation, any building, garage, porch, shed, greenhouse or bathhouse, cop or cage, covered

or uncovered patio, mailbox, swimming pool, clothes line, radio or television antenna, fence, curbing, paving, wall or hedge more than two (2) feet in height, signboard or any temporary or permanent living quarters (including any house trailer or motor home) or any other temporary or permanent improvement to such Parcel. "Structure" shall also mean (i) any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters from, upon or across any Parcel, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across any Parcel and (ii) any change in the grade of any Parcel of more than six inches from that existing at the time of purchase by each Owner.

17.20 Trace Crossings or Trace Crossings Property. The property described as Trace Crossings in the Declaration and other property which may be acquired by Developer and developed as a part of Trace Crossings. That part of Trace Crossings subjected to the Declaration is referred to as "Property", "Subject Property", or "Member's Property".

17.21 Tract. A contiguous piece of Property under one Ownership.

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REAL 646 PAGE 560

IN WITNESS WHEREOF, this Declaration of Protective Covenants of Trace Crossings (Business) has been executed by the HARBERT-USR REALTY JOINT VENTURE, an Alabama General Partnership, effective the 20th day of March, 1987.

HARBERT-USR REALTY JOINT VENTURE,
an Alabama general partnership

ATTEST:

By: [Signature]
Its Secretary

By: HARBERT PROPERTIES, INC.,
its general partner

By: [Signature]
Its President

ATTEST:

By: [Signature]
Its Assistant Secretary

By: USR REALTY DEVELOPMENT, A DIVISION
OF U.S. DIVERSIFIED GROUP OF USX
CORPORATION, its general partner

By: [Signature]
Its Treasurer

BOOK 127 PAGE 694

REAL 646 PAGE 561

STATE OF

COUNTY OF

I, Brenda M. Coker, a Notary Public in and for said County in said State, hereby certify that Raymond Harbert, whose name as President of Harbert Properties, Inc., a corporation, as general partner of Harbert-USR Realty Joint Venture, an Alabama general partnership, 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 said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation, in its capacity as general partner of said partnership.

Given under my hand this the 16th day of March, 1987.

NOTARIAL SEAL

Brenda M. Coker
Notary Public

My commission expires: 6-17-89

STATE OF

PA

COUNTY OF Allegheny

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that J.R. Ruthersford, whose name as Treasurer of USR Realty Development, A Division of U.S. Diversified Group of USX Corporation, a corporation, as general partner of Harbert-USR Realty Joint Venture, an Alabama general partnership, 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 said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation, in its capacity as general partner of said partnership.

Given under my hand this the 20th day of March, 1987.

NOTARIAL SEAL

Margaret R. Kline
Notary Public

My commission expires: _____

MARGARET R. KLINE, Notary Public
PITTSBURGH, ALLEGHENY COUNTY
MY COMMISSION EXPIRES JULY 15, 1987
Member, Pennsylvania Association of Notaries

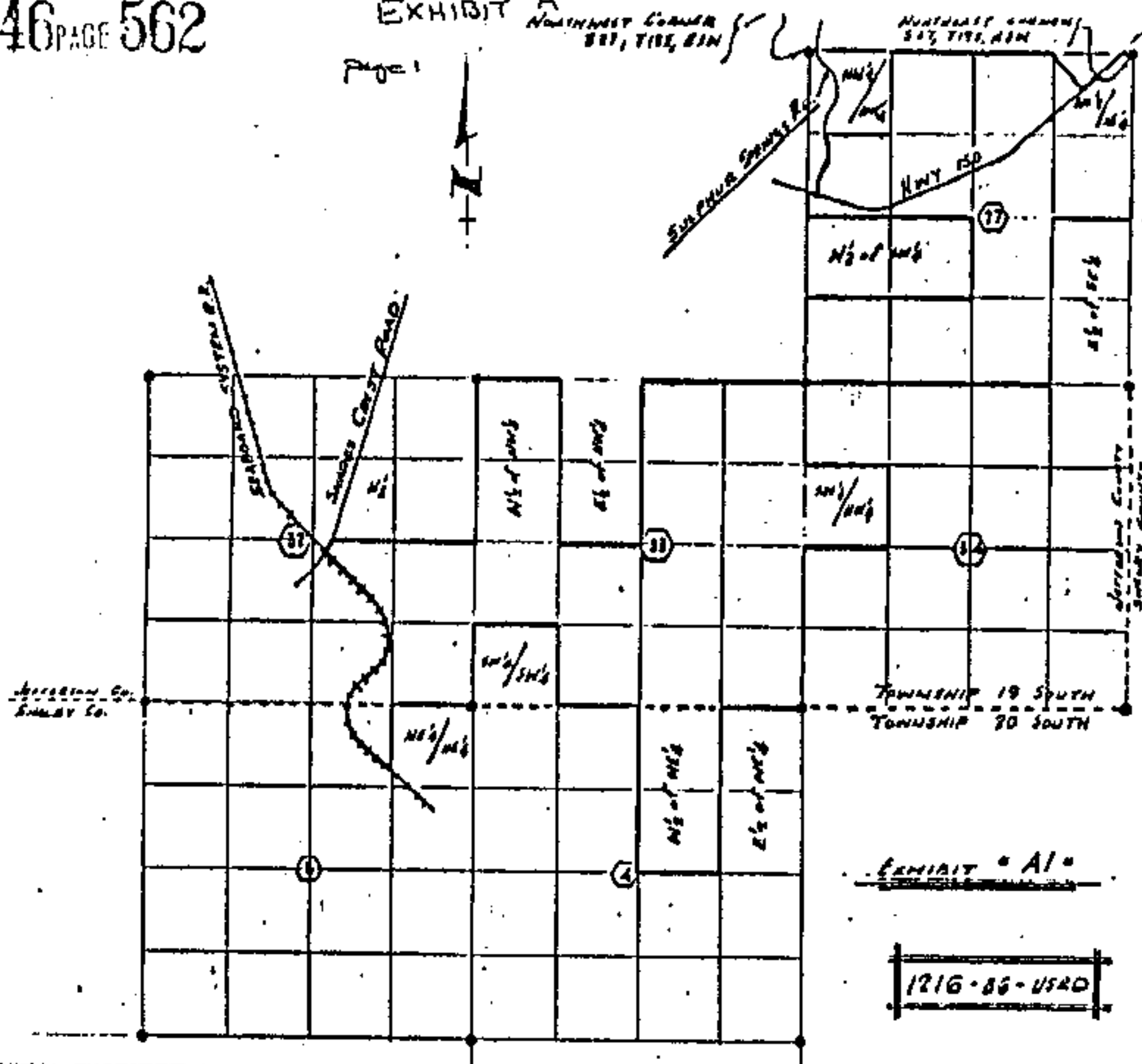
THIS INSTRUMENT PREPARED BY:
Randolph H. Lanier
Balch & Bingham
P. O. Box 306
Birmingham, Alabama 35201

EXHIBIT A

NORTHWEST CORNER
227, TIRE, SIN

[illegible]

Page 1



Tract of land herein described situated in 627, 632, 633, 634, T108, R3W in Jefferson County, Alabama and 64, 65, T208, R3W in Shelby County, Alabama and being more particularly described as follows:

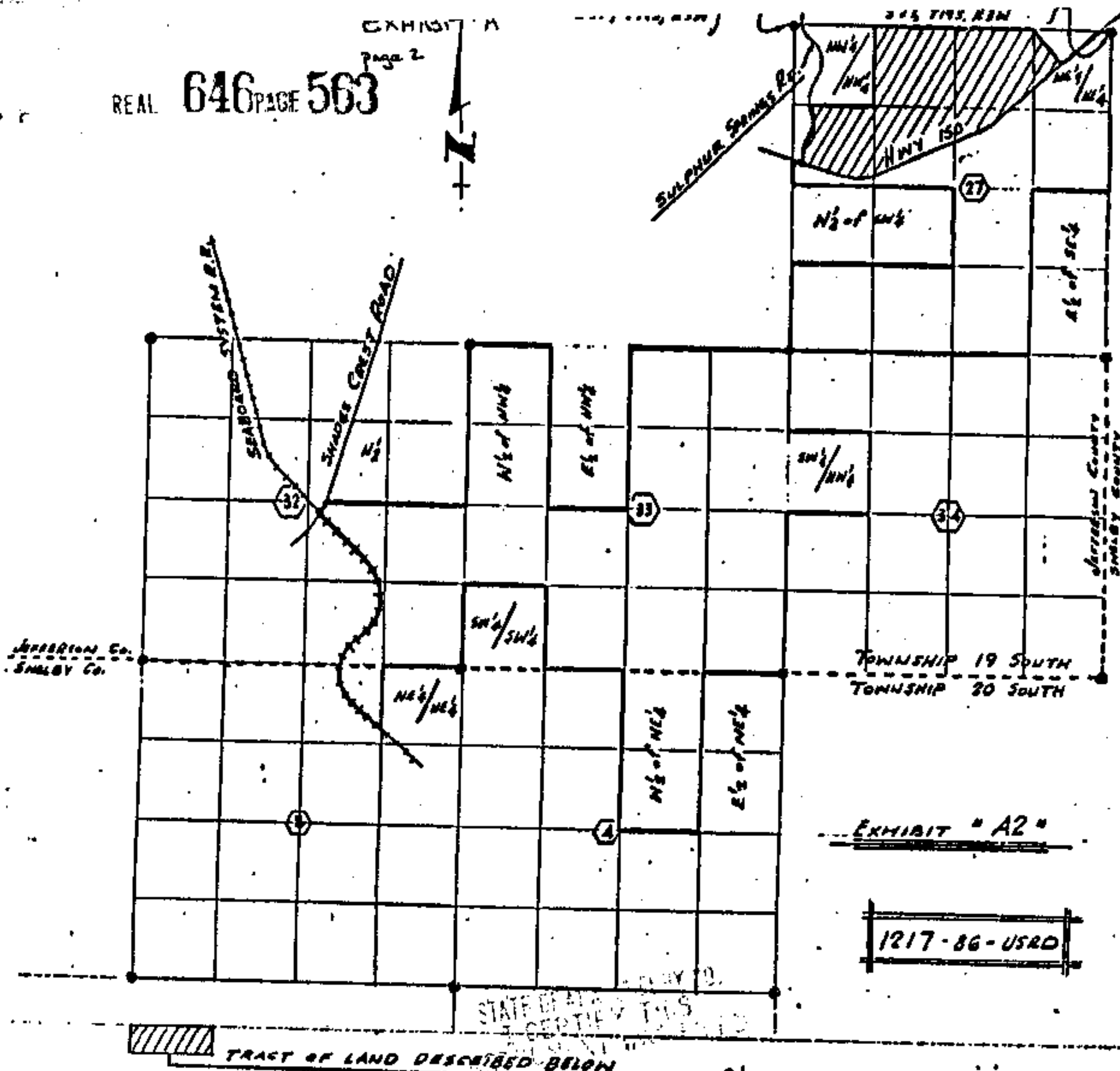
Begin @ NE corner of S27, T10S, R3W and run south along east line to the NW corner of the E 1/2 of S2 1/4 of S27; thence west along north line of said E 1/2 to the NW corner of said E 1/2; thence south along west line of said E 1/2 to a point on the south line of S27; thence west along south line of S27 to the NE corner of S33, T10S, R3W; thence south along the east line of S33 to the NW corner of SW 1/4 of NW 1/4 of S24, T10S, R3W; thence east along the north line of said 1/4-1/4 to the NE corner of said 1/4-1/4; thence south along the east line of said 1/4-1/4 to the SE corner of said 1/4-1/4; thence west along south line of said 1/4-1/4 to a point on the east line of S33, T10S, R3W; thence south along east line of S33 to the NE corner of E 1/2 of NE 1/4 of S4, T20S, R3W; thence west along north line of said E 1/2 to the NE corner of the W 1/2 of NE 1/4 of S4; thence south along east line of said W 1/2 to the SE corner of said W 1/2; thence west along south line of said W 1/2 to the SW corner of said W 1/2; thence north along the west line of said W 1/2 to the NW corner of said W 1/2; thence west along south line of S33, T10S, R3W to the SE corner of SW 1/4 of SW 1/4 of S33; thence north along east line of said 1/4-1/4 to the NE corner of said 1/4-1/4; thence west along north line of said 1/4-1/4 to the NW corner of said 1/4-1/4; thence south along the west line of said 1/4-1/4 to the NE corner of the NE 1/4 of NE 1/4 of S6, T20S, R3W; thence west along the north line of last said 1/4-1/4 to the NW corner of last said 1/4-1/4; thence south along the west line of last said 1/4-1/4 to a point of intersection with the C/L of the Seaboard System RR; thence northwesterly, northeasterly and northeasterly along said NW C/L to a point of intersection with the C/L of a public road (Shades Crest Rd); thence northeasterly along said roadway C/L to a point on the south line of the W 1/2 of S32, T10S, R3W; thence east along south line of W 1/2 of S32 to the SW corner of the W 1/2 of NW 1/4 of S33, T10S, R3W; thence north along west line of said W 1/2 to the NW corner of said W 1/2; thence east along north line of said W 1/2 to the NW corner of the E 1/2 of the NW 1/4 of S33, T10S, R3W; thence south along the west line of said E 1/2 to the SW corner of said E 1/2; thence east along the south line of said E 1/2 to the SE corner of said E 1/2; thence north along the east line of said E 1/2 to a point on the north line of S32; thence east along the north line of said S32 to the SW corner of S27, T10S, R3W; thence north along west line of S27 to the SW corner of the W 1/2 of SW 1/4 of S27; thence east along south line of said W 1/2 to the SE corner of said W 1/2; thence north along the east line of said W 1/2 to the NE corner of said W 1/2; thence west along the north line of said W 1/2 to a point on the west line of S27; thence north along west line of S27 to a point of intersection with the C/L of a public road (Highway 160); thence southeasterly along said roadway C/L to a point of intersection with the C/L of a public road (Sulphur Springs Rd); thence northerly along said roadway C/L to a point on the south line of the NW 1/4 of NW 1/4 of S27; thence east along the south line of said 1/4-1/4 to the SE corner of said 1/4-1/4; thence north along the east line of said 1/4-1/4 to a point on the north line of S27; thence east along the north line of S27 to the NW corner of the NE 1/4 of NE 1/4 of S27; thence southeasterly along the diagonal 1/2 of last said 1/4-1/4 to a point of intersection with the C/L of a public road (Highway 160); thence northeasterly along the roadway C/L to a point on the north line of S27; thence east along the north line of S27 to the point of beginning.

Excepting & reserving from the above description:

- (a) That portion of R.O.W. lying east of and adjacent to the C/L of the Seaboard System RR located in S32, T19S, R3W and S3, T20S, R3W.
- (b) That portion of R.O.W. lying east of and adjacent to the C/L of Shaden Creek Rd located in S32, T19S, R3W.
- (c) That portion of R.O.W. lying east of and adjacent to the C/L of Sulphur Springs Rd located in S27, T19S, R3W.
- (d) That portion of R.O.W. lying north of _____

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EXHIBIT "A"
Page 2



Rec. 122.50 1987 APR 29 AM 8:34
Ind. 1.00
12350
JUDGE OF PROBATE

STATE OF ALA. JEFFERSON CO.
BESSEMER DIV. I CERTIFY
THIS INSTRUMENT FILED ON
MAR 30 3 59 PM '87

Tract of land herein described situated in S27, T19S, R3W in Jefferson County, Alabama and being more particularly described as follows:

Commence @ the NW corner of S27, T19S, R3W and run east along the north line of S27 to the NE corner of the NW 1/4 of NW 1/4 of S27, said point also being the point of beginning; thence continue east along the north line of S27 to the NW corner of the NE 1/4 of NE 1/4 of S27; thence southeasterly along the diagonal 1/2 of last said 1/4-1/4 to a point of intersection with the C/L of a public road (Highway 150); thence southwesterly and northwesterly along roadway C/L to a point of intersection with the C/L of a public road (Sulphur Springs Rd); thence northerly along last said roadway C/L to a point on the south line of the NW 1/4 of NW 1/4 of S27; thence east along the south line of said 1/4-1/4 to the SE corner of said 1/4-1/4; thence north along the east line of said 1/4-1/4 to the point of beginning.

Excepting and reserving from the above description:

- That portion of R.O.W. lying north of and adjacent to the C/L of Highway 150.
- That portion of R.O.W. lying east of and adjacent to the C/L of Sulphur Springs Road.

Recorded & indexed
Need tax has been paid on this instrument.

[Signature]
Judge of Probate

[Signature]
JOL

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