

[PHASE I TO PHASES II & III]

Rec 256

STATE OF ALABAMA)

1442

SHELBY COUNTY)

EASEMENT FOR INGRESS AND EGRESS

THIS EASEMENT made as of this 15th day of October, 1987 by and among HEATHERBROOKE INVESTORS, LTD., an Alabama limited partnership (the "Grantor"), EQUITY PARTNERS JOINT VENTURE, an Alabama joint venture, and COLONIAL PROPERTIES, INC., an Alabama corporation (collectively, the "Grantee"), FIRST ALABAMA BANK, as Trustee (the "First Mortgagee"), and AMSOUTH BANK N.A., a national banking association (the "Second Mortgagee") provides as follows:

BOOK 164 PAGE 433

W I T N E S S E T H:

WHEREAS, the Grantor is the owner of the real property located in Shelby County, Alabama described in Exhibit "A" attached hereto and incorporated herein which is commonly known as Heatherbrooke Apartments Phase I ("Premises A"); and

WHEREAS, the Grantee is collectively the owner of the real property located in Shelby County, Alabama described in Exhibit "B" attached hereto and incorporated herein which is commonly known as Heatherbrooke Apartments Phase II and Phase III ("Premises B"); and

WHEREAS, in connection with the development, construction and improvement of Premises B, and in order to provide ingress to and egress from Premises B, the Grantee

Land Title

has requested that the Grantor grant to Grantee an easement for ingress and egress over and through Premises A; and

WHEREAS, the Grantor is willing to establish an easement over and through Premises A in accordance with the terms and provisions hereinafter set forth; and

WHEREAS the First Mortgagee and the Second Mortgagee are willing to subordinate their mortgage liens on Premises A to the easement being hereby granted.

NOW, THEREFORE, for and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantor, the Grantee, the First Mortgagee and the Second Mortgagee covenant and agree for themselves, their successors and assigns, as follows:

1. GRANT OF EASEMENT. The Grantor hereby grants, sells and conveys unto the Grantee, its successors, assigns and others described herein, subject to the limitations, terms and conditions herein, a non-exclusive easement for ingress and egress for vehicular and pedestrian traffic upon, over and through that portion of Premises A that is designated and described in Exhibit "C" attached hereto and incorporated herein (the "Easement Premises"). The Grantee's use of the Easement Premises shall be uninterrupted and in common with the Grantor, its successors and assigns, and others to whom the Grantor may

grant similar easements in the future, and their respective customers, tenants, invitees, licensees, lessees, employees, and others described herein.

It is expressly agreed that such easement shall be for the non-exclusive use and benefit of the Grantee, its successors and assigns, and guests, and their respective customers, tenants, invitees, licensees, lessees, and employees, at all times during the term hereof, for the purposes and subject to the limitations described herein.

2. PROHIBITION OF IMPROVEMENTS ON EASEMENT PREMISES. The Grantor shall not build or maintain, or permit to be built or maintained, any structure on the Easement Premises. This restriction shall not apply to paving, asphalt, and other materials related to the installation; construction and maintenance of a roadway, light towers, appurtenant electrical equipment, signs relating to business conducted on Premises A, traffic or directional signs, fences, gates, or other similar structures which at the time of the erection thereof are usual in the operation of an apartment complex and the management of vehicular traffic therein and do not otherwise interfere with the ingress and egress of the Grantee as provided for herein.

3. MAINTENANCE OF EASEMENT PREMISES. (a) Grantor shall maintain and keep in good repair the right-of-way located upon the Easement Premises and shall keep such

right-of-way clear and free of rubbish and obstructions of every nature. The expense of such maintenance shall be borne by the Grantor and the Grantee in proportion to the number of completed residential housing units located on their respective properties. By way of example, if 250 completed residential housing units are constructed on Premises A and 125 completed residential housing units are constructed on Premises B, sixty-seven percent (67%) of the maintenance expense would be paid by the Grantor and the balance of such expense shall be paid by Grantee. For purposes of this Section 3, the term "completed residential housing units" shall mean housing units for which a certificate of occupancy or comparable certification has been issued. The number of such completed units shall be determined on December 31 of each year for the purpose of making the calculations and allocations prescribed by this Section 3 for the calendar year concluding on that date.

(b) By March 31 of each year, Grantor and Grantee shall provide to each other an accounting of their respective expenses as described hereinabove incurred during the immediately preceding calendar year. Within thirty (30) days from its receipt of such accounting, Grantee shall pay to Grantor, or Grantor shall pay to Grantee, as the case may be, its proportionate share of such expense as is necessary to satisfy their prorata obligations as required by this Section 2. In the event

either party defaults under the terms of this paragraph (b), the defaulting party shall be liable to the non-defaulting party for its proportionate share of such expense, plus interest on such amount at the rate of 15% per annum from the date such funds are expended by the non-defaulting party, and all costs, including attorneys' fees, incurred by the non-defaulting party in enforcing the terms of this paragraph (a).

(c) In the event Grantor fails to maintain and keep in good repair the Easement Premises as required by paragraph (a) of this Section 3, Grantee may notify the Grantor in writing of the necessity for repairs or maintenance hereunder. If Grantor shall not remedy the default within a reasonable time, not to exceed thirty (30) days after receipt of notice, Grantee may enter upon Premises A and the Easement Premises for the purpose of making such repairs and the Grantor will be responsible for its proportionate share of the cost thereof together with interest at the rate of 15% per annum from the date said funds are expended without further notice.

4. TERM. This Agreement and the easement created hereby shall continue for so long as Premises B is utilized for the development, construction and operation of a residential multifamily housing facility and other operations incidental thereto and no other purpose. Should that portion of Premises B described on Exhibit B hereto

as Parcel No. 1 no longer be used for such purpose, the easement granted by this Agreement shall remain in force and effect, but only to the extent required to benefit that portion of Premises B described on Exhibit B hereto as Parcel No. 2. Should that portion of Premises B described on Exhibit B hereto as Parcel No. 2 no longer be used for such purpose, the easement granted by this Agreement shall remain in force and effect, but only to the extent required to benefit that portion of Premises B described on Exhibit B hereto as Parcel No. 1.

BOOK 164 PAGE 438
5. COVENANTS RUNNING WITH LAND. The easement hereby granted, the restrictions hereby imposed, and the agreements herein contained shall be easements, restrictions, and covenants running with the land and shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, successors and assigns, including, but without limitation, all subsequent owners of Premises A and Premises B and all persons claiming under them.

6. SUBORDINATION BY FIRST MORTGAGEE. By joining in the execution of this agreement, the First Mortgagee, for itself and its successors and assigns, does hereby subordinate its mortgage recorded at Real Volume 054, page 498 in the Office of the Judge of Probate for Shelby County, Alabama and transferred at Real Volume 054, page 524 in the said probate office (the "First Mortgage"), to

the easement hereby granted so that the First Mortgage, and all extensions, modifications, and renewals thereof, now or hereafter additionally securing the indebtedness secured by the First Mortgage shall be subordinated to the same extent as if this agreement had been executed, delivered and recorded prior to the execution, delivery and recordation of the First Mortgage.

BOOK 164 PAGE 439
7. SUBORDINATION BY SECOND MORTGAGEE. By joining in the execution of this agreement, the Second Mortgagee, for itself and its successors and assigns, does hereby subordinate its mortgage recorded at Real Volume 054, page 565 in the Office of the Judge of Probate for Shelby County, Alabama (the "Second Mortgage") to the easement hereby granted to the Grantee and others to whom the Grantor may grant similar easements in the future as provided in paragraph 1 hereof so that the Second Mortgage, and all extensions, modifications, and renewals thereof, now or hereafter additionally securing the indebtedness secured by the Second Mortgage shall be subordinated to the same extent as if this agreement had been executed, delivered and recorded prior to the execution, delivery and recordation of the Second Mortgage.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first set forth above.

[SIGNATURES COMMENCE ON NEXT PAGE]

BOOK 164 PAGE 440

HEATHERBROOKE INVESTORS, LTD., an
Alabama limited partnership

By: COLONIAL PROPERTIES MANAGE-
MENT ASSOCIATION, its general
partner

WITNESS:
ATTEST:

By: 
Its: Assistant Secretary

By: 
THOMAS H. LOWDER
Its Managing Partner

EQUITY PARTNERS JOINT VENTURE, an
Alabama joint venture

By: COLONIAL PROPERTIES, INC.

ATTEST:

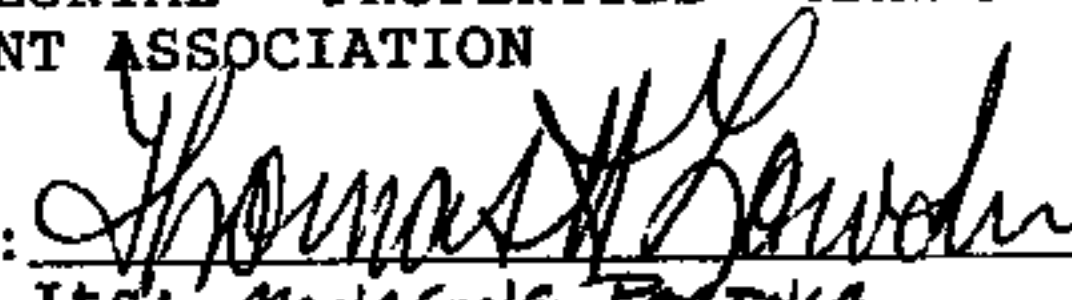
By: 
Its: Asst. Secretary

By: 
Its: PRESIDENT

By: COLONIAL PROPERTIES MANAGE-
MENT ASSOCIATION

WITNESS:



By: 
Its: MANAGING PARTNER

COLONIAL PROPERTIES, INC., an
Alabama corporation

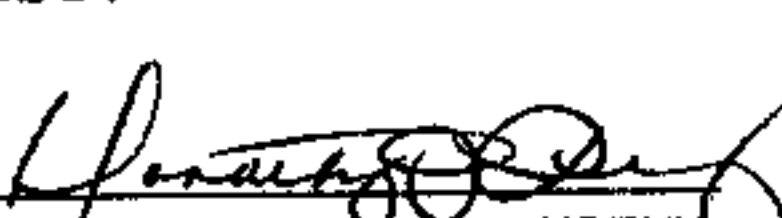
ATTEST:

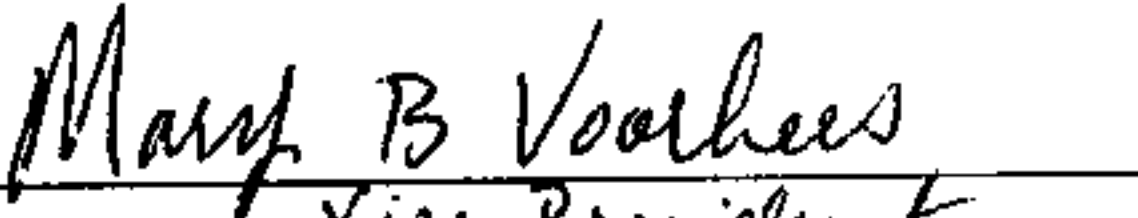
By: 
Its: Asst. Secretary

By: 
THOMAS H. LOWDER
Its President

AMSOUTH BANK N.A., a national
banking association

ATTEST:

By: 
Its: ASSISTANT VICE PRESIDENT

By: 
Its: Vice President

FIRST ALABAMA BANK

ATTEST:

By: Brock Holt
Its: Assistant Vice President
and Corporate Trust Officer

By: Walter L. Parby, Jr.
Its: Vice President Trust Comptroller
and Corporate Trust Officer

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that THOMAS H. LOWDER, whose name as Managing Partner of COLONIAL PROPERTIES MANAGEMENT ASSOCIATION as general partner of HEATHER-BROOKE INVESTORS, LTD., is signed to the foregoing Easement, and who is known to me, acknowledged before me on this day, that, being informed of the contents thereof, he, as such partner and with full authority, executed the same voluntarily for and as the act of said partnership.

Given under my hand and official seal, this the 1st day of October, 1987.

Diane Henninger
NOTARY PUBLIC

My Commission Expires: 12-5-88

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Thomas H. Lowder, whose name as President of COLONIAL PROPERTIES, INC. as general partner of EQUITY PARTNERS JOINT VENTURE, is signed to the foregoing Easement, and who is known to me, acknowledged before me on this day, that, being informed of the contents thereof, he, as such partner and with full authority, executed the same voluntarily for and as the act of said partnership.

Given under my hand and official seal, this the 1st day of October, 1987.

Diane Henninger
NOTARY PUBLIC

My Commission Expires 12-5-88

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Thomas H. Lowder, whose name as Managing General Partner of COLONIAL PROPERTIES MANAGEMENT ASSOCIATION, as general partner of EQUITY PARTNERS JOINT VENTURE, is signed to the foregoing Easement, and who is known to me, acknowledged before me on this day, that, being informed of the contents thereof, he, as such partner and with full authority, executed the same voluntarily for and as the act of said partnership.

Given under my hand and official seal, this the 1st day of October, 1987.

Diane Henninger
NOTARY PUBLIC

My Commission Expires: 12-5-88

BOOK 164 PAGE 442

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that THOMAS H. LOWDER, whose name as President of COLONIAL PROPERTIES INC., a corporation, is signed to the foregoing Easement, and who is known to me, acknowledged before me on this day, that, being informed of the contents thereof, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal, this the 1st day of October, 1987.

Diane Henninger
NOTARY PUBLIC

My Commission Expires: 12-5-88

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Mary B. Voorhees, whose name

as Vice President of AMSOUTH BANK N.A., a corporation, is signed to the foregoing Easement, and who is known to me, acknowledged before me on this day, that, being informed of the contents thereof, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal, this the 1ST day of October, 1987.

Lisa Ann Wartsfield
NOTARY PUBLIC

My Commission Expires: 4-18-90

STATE OF ALABAMA)
MONTGOMERY COUNTY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that WALTER L. DABBY, JR., whose name as Vice President Trust Comptroller of FIRST ALABAMA BANK, a corporation, is ~~and signed to~~ signed to the foregoing Easement, and who is known to me, acknowledged before me on this day, that, being informed of the contents thereof, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal, this the 28th day of September, 1987.

Bonnie Lynn Alcorn
NOTARY PUBLIC

My Commission Expires: 4/29/91

THIS INSTRUMENT WAS PREPARED BY: W. CLARK WATSON, LEITMAN, SIEGAL, PAYNE & CAMPBELL, P.C., 425 First Alabama Bank Building, Birmingham, Alabama 35203.

BOOK 164 PAGE 443

EXHIBIT "A"

PREMISES A

(Phase I)

Parcel One:

Beginning at the Southwest corner of the NW1/4 of the NE1/4, Section 36, Township 18 South, Range 2 West, run North along the West boundary of said quarter-quarter a distance of 83.35 feet; thence right 45°06' a distance of 63.10 feet; thence left 49°11'30" a distance of 170.55 feet; thence right 24°46' a distance of 588.26 feet; thence left 36°03' a distance of 156.52 feet; thence right 37°27' a distance of 135.37 feet; thence right 89°18'30" a distance of 119.33 feet; thence left 80°18' along a traverse line which approximates the water's edge of Lake Dixie, said water's edge being the true property line, a distance of 204.08 feet; thence right 80°48' and continuing along said traverse line a distance of 265.33 feet; thence left 17°25' a distance of 77.06 feet; thence right 5°11' a distance of 65.07 feet; thence right 51°03' a distance of 94.44 feet; thence right 43°56' a distance of 132.54 feet; thence right 18°31' a distance of 230.34 feet; thence right 6°55' a distance of 142.56 feet; thence left 85°30' a distance of 251.21 feet, which ends the traverse line approximating the water's edge of Lake Dixie, the remaining being the description of the exact property line of the land herein described, thence right 46°22' a distance of 420.00 feet; thence right 91°07' a distance of 271.66 feet thence left 88°53' a distance of 60.01 feet; thence right 91°07' a distance of 548.37 feet to the point of beginning.

AND:

Beginning at the SE corner of the NE 1/4 of the NW 1/4, Section 36, Township 18 South, Range 2 West, run North along the East boundary of said 1/4-1/4 a distance of 83.35 feet; thence right 45°06' a distance of 63.10 feet; thence left 49°11'30" a distance of 170.55 feet; thence left 155°14' along the centerline of a road easement having a width of 30 feet on each side of the center line, a distance of 61.00 feet to the point of tangency of a curve to the left; thence left along the arc of the curve having a radius of 880.67 feet, a distance of 199.15 feet through an angle of 12°57'23"; thence continue along the projected tangent to the aforementioned curve a distance of 47.12 feet to the South boundary of said 1/4-1/4 Section; thence left 95°39'01" along said South boundary a distance of 44.10 feet to the point of beginning.

BOOK 164 PAGE 444

Parcel Two:

A non-exclusive easement for ingress and egress and the installation of utilities, 60 feet in width being 30-feet on each side of centerline described as follows:

From the SE corner of the NE 1/4 of the NW 1/4, Section 36, Township 18 South, Range 2 West, Shelby County, Alabama, run West along the South boundary of said 1/4-1/4 a distance of 44.10 feet to the point of beginning; thence 30 feet each side of a line described as: From the said 1/4-1/4 line, turn an angle of the right of $95^{\circ}39'07''$ and go 47.13 feet; thence right along the arc of a curve with a radius of 280.67 feet, a distance of 199.15 feet; thence along the tangent line to said curve a distance of 570.51 feet; thence along a curve to the left with a radius of 242.04 feet a distance of 152.29 feet; thence, along the arc of a curve to the right with a radius of 232.35 feet a distance of 42.38 feet, said point being the end of this easement. Said easement being originally created by instrument recorded in Real Record 13, page 426 in the Probate Office of Shelby County, Alabama.

Parcel Three:

BOOK 164 PAGE 445

From the NW corner of the NW 1/4 of the NE 1/4, Section 36, Township 18 South, Range 2 West, run South along the West boundary of said 1/4-1/4 a distance of 370.01 feet; thence left $88^{\circ}01'30''$ a distance of 212.71 feet to the point of beginning, said point on the centerline of a road, said centerline being a curve to the right with a radius of 232.35 feet; thence turn left $97^{\circ}53'56''$ to the tangent of said curve and follow the arc of the curve a distance of 109.49 feet to the point of tangency of said curve; thence continue along the projection of said tangent a distance of 56.61 feet. Said easement being originally created by instrument recorded in Real Record 028, page 673 in the Probate Office of Shelby County, Alabama.

EXHIBIT "B"

PREMISES B

(Phase II)

Parcel No. 1

Begin at the Southeast corner of the Northwest 1/4 of the Northeast 1/4 of Section 36, Township 18 South, Range 2 West, Shelby County, Alabama, and from the East line of said 1/4-1/4 section turn an angle to the left of 68°16'22" and run in a Northwesterly direction a distance of 104.15 feet to a point; thence turn an interior angle of 203°16'04" and run to the left in a Westerly direction a distance of 60.00 feet to a point; thence turn an interior angle of 90°00'00" and run to the right in a Northerly direction a distance of 140.00 feet to a point; thence turn an interior angle of 253°37'30" and run to the left in a Northwesterly direction a distance of 343.73 feet to a point; thence turn an interior angle of 103°30'15" and run to the right in a Northerly direction a distance of 230.00 feet to a point; thence turn an interior angle of 226°21'56" and run to the left in a Northwesterly direction a distance of 251.21 feet to a point; thence turn an interior angle of 94°29'04" and run to the right in a Northeasterly direction a distance of 142.56 feet to a point; thence turn an interior angle of 186°55'00" and run to the left in a Northeasterly direction a distance of 230.34 feet to a point; thence turn an interior angle of 198°31'00" and run to the right in a Northeasterly direction a distance of 132.54 feet to a point; thence turn an interior angle of 223°56'00" and run to the left in a Northwesterly direction a distance of 94.44 feet to a point; thence turn an interior angle of 231°03'00" and run to the left in a Northwesterly direction a distance of 65.07 feet to a point; thence turn an interior angle of 185°11'00" and run to the left in a Westerly direction a distance of 77.06 feet to a point; thence turn an interior angle of 162°35'00" and run to the right in a Northwesterly direction a distance of 107.00 feet to a point; thence turn an interior angle of 70°49'13" and run to the right in a Northeasterly direction a distance of 164.21 feet to a point; thence turn an interior angle of 101°45'33" and run to the right in a Southeasterly direction a distance of 676.55 feet to a point on the East line of the Northwest 1/4 of the Northeast 1/4 of Section 36; thence turn an interior angle of 119°43'03" and run to the right in a Southerly direction along the East line of said 1/4-1/4 section a distance of 1029.58 feet to the point of beginning; containing 12.37 acres more or less.

BOOK 164 PAGE 446

ALSO

(Phase III)

Parcel No. 2

Begin at the Northeast corner of the Southwest 1/4 of the Northeast 1/4 of Section 36, Township 18 South, Range 2 West, Shelby County, Alabama, and from the East line of said 1/4-1/4 section turn an angle of $50^{\circ}21'41''$ to the right and run in a Southwesterly direction a distance of 447.65 feet to a point; thence turn an interior angle of $107^{\circ}32'48''$ and run to the right in a Northwesterly direction a distance of 581.40 feet to a point; thence turn an interior angle of $30^{\circ}08'54''$ and run to the right in an Easterly direction a distance of 64.47 feet to a point; thence turn an interior angle of $271^{\circ}22'10''$ and run to the left in a Northerly direction a distance of 60.02 feet to a point; thence turn an interior angle of $88^{\circ}50'58''$ and run to the right in an Easterly direction a distance of 270.67 feet to a point; thence turn an interior angle of $271^{\circ}07'03''$ and run to the left in a Northerly direction a distance of 190.00 feet to a point; thence turn an interior angle of $76^{\circ}29'45''$ and run to the right in a Southeasterly direction a distance of 343.73 feet to a point; thence turn an interior angle of $106^{\circ}22'30''$ and run to the right in a Southerly direction a distance of 140.00 feet to a point; thence turn an interior angle of $270^{\circ}00'00''$ and run to the left in an Easterly direction a distance of 60.00 feet to a point; thence turn an interior angle of $156^{\circ}43'56''$ and run to the right in a Southeasterly direction a distance of 104.15 feet to the point of beginning; containing 4.92 acres, more or less.

BOOK 164 PAGE 447

EXHIBIT "C"

EASEMENT PREMISES

A 28 foot wide access easement situated in the Northwest 1/4 of the Northeast 1/4 of Section 36, Township 18 South, Range 2 West, Shelby County, Alabama, whose centerline is more particularly described as follows:

Commence at the Southeast corner of the Northeast 1/4 of the Northwest 1/4 of Section 36, Township 18 South, Range 2 West, Shelby County, Alabama, and run in a Westerly direction along the South line of said 1/4-1/4 section a distance of 13.95 feet to a point on the Easterly right-of-way line of Inverness Parkway East; thence turn a deflection angle of $95^{\circ}42'42''$ to the right and run in a Northerly direction along the Easterly right-of-way line of Inverness Parkway East a distance of 44.18 feet to the PC of a curve; thence continue in a Northerly to Northeasterly direction along the Easterly right-of-way line of Inverness Parkway East and along the arc of a curve to the right having a central angle of $12^{\circ}57'23''$ and a radius of 850.67 feet a distance of 192.36 feet to the PT of said curve; thence continue in a Northeasterly direction along the Easterly right-of-way line of Inverness Parkway East and along the projection of the tangent to the last described curve a distance of 389.65 feet to the point of beginning; thence turn a deflection angle of $81^{\circ}11'33''$ to the right and run in a Southeasterly direction along the centerline of the herein described easement a distance of 128.78 feet to the PC of a curve; thence continue in a Southeasterly direction along the centerline of said easement and along the arc of a curve to the right having a central angle of $41^{\circ}39'27''$ and a radius of 365.00 feet a distance of 265.38 feet to the PT of said curve; thence continue in a Southeasterly direction along the projection of the tangent to the last described curve a distance of 52.74 feet to the PC of a curve; thence continue in a Southeasterly to Easterly direction along the centerline of said easement and along the arc of a curve to the left having a central angle of $86^{\circ}05'32''$ and a radius of 120.00 feet a distance of 180.31 feet to the PT of said curve; thence continue in a Northeasterly direction along the centerline of said easement and along the projection of the tangent to the last described curve a distance of 44.45 feet to the PC of a curve; thence continue in a Northeasterly to Easterly direction along the centerline of said easement and along the arc of a curve to the right having a central angle of $45^{\circ}08'27''$ and a radius of 100.00 feet a distance of 78.79 feet to the point of ending; the easement lines 14 feet right and left of the herein described centerline are to be lengthened or shortened as

BOOK 164 PAGE 448

required to intersect with the property lines at the point of beginning and point of ending; containing 0.48 acres, more or less.

BOOK 164 PAGE 449

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

1987 DEC 21 PM 2:32

Thomas A. Snowden, Jr.
JUDGE OF PROBATE

1. Deed Tax	\$ <u>50</u>
2. Mtg. Tax	<u> </u>
3. Recording Fee	<u>42.50</u>
4. Indexing Fee	<u>3.00</u>
TOTAL	<u>46.00</u>