

STATE OF ALABAMA)
COUNTY OF SHELBY)

**DECLARATION OF EASEMENT
AND RESTRICTIVE COVENANTS**

THIS DECLARATION OF EASEMENT AND RESTRICTIVE COVENANTS (this "Declaration") is hereby made and declared this 20th day of October, 1992, by Chelsea Properties, Inc., (the "Developer") an Alabama corporation (formerly known as Cloud & Estes, Inc.).

WHEREAS, Developer acquired a tract of approximately 445 acres in Shelby County, Alabama, that is located in the Southeast Quarter and the Southeastern Quarter of the Southwestern Quarter of Section 7 and the Northwest Quarter of Section 18, Township 20 South, Range 1 West, and in the Eastern Half of the Northeastern Quarter, the Northern Half of the Southeastern Quarter, the Northeastern Quarter of the Southwestern Quarter of Section 13, Township 20 South, Range 2 West (the "Developer Property").

WHEREAS, Developer has subdivided portions of the Developer Property into single family lots in a subdivision that is commonly known as High Chaparral and that is more particularly described in the Plat of High Chaparral, First Sector (the "First Sector") as recorded in Map Book 12, page 57 A & B, in the Probate Office of Shelby County, Alabama, and the Plat of High Chaparral, Sector B ("Sector B"), as recorded in Map Book 16, page 69, as amended by the Resubdivision of Lots 48-57 of High Chaparral Sector B and Acreage, as recorded in Map Book 16, Page 116, in said office. The Developer has sold to others certain of the lots in the First Sector. The Developer currently is the owner of all of the lots in Sector B.

WHEREAS, the First Sector is subject to the Restrictions for High Chaparral, First Sector which are reflected in the instruments recorded in Book 196 at page 237, Book 237 at page 729, and Book 273 at page 75 in the Probate Office of Shelby County, Alabama, and which are amended by the Amendment to Restrictions for High Chaparral First Sector (the "Amendment") executed and filed for record on even date herewith. Section 10 of the Covenants, prior to the Amendment, provided for the reservation of a ten acre site for Equestrian use and/or Swim and Tennis Club and Soccer Field.

WHEREAS, the Developer has reserved a site of approximately 16 acres in Sector B, which site is described on the record map for Sector B as the "Common Area Reserved for Equestrian Purposes" and "Common Area Reserved for Swim and Tennis Facilities" (the "Site"). The Developer desires to grant an easement for the benefit of the

10163497

Inst # 1992-25020
10/28/1992-25020
04:49 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
009 MCD 27.50

present and future owners of lots in the Developer Property for the use of the Site for such purposes. Developer further desires to clarify to the present and future owners of lots within the Developer Property the commitment of the Developer with respect to the construction and operation of swim and tennis facilities (the "Facilities") on the Site. The Developer further desires to authorize the formation of a homeowner's association for the purpose of acquiring and operating the Facilities.

NOW, THEREFORE, These Premises Considered, the Developer does hereby publish, declare, reserve and grant for the benefit of all present and future owners ("Lot Owners") of lots that are now or may hereafter be subdivided within the Developer Property, including specifically but without limitation, the lots in the First Sector and Sector B, their heirs, successors, assigns, guests, tenants, family members and invitees (collectively the "Benefitted Parties"), a nonexclusive right, license and easement, in, over and across the Site for the purpose of engaging in recreational activities only, such permitted recreational activities being limited to equestrian use and the use of such swim and tennis facilities as may hereafter be constructed on the Site as provided herein (the "Easement"); provided, however, that the Easement shall be subject to the terms, conditions, covenants and restrictions set forth herein as follows:

1. Equestrian Use. The entire Site may be used for horseback riding until such time as the Facilities are constructed on the portion of the Site designated as "Common Area Reserved for Swim and Tennis Facilities," at which time horseback riding shall be limited to the portions of the Site designated "Common Area Reserved for Equestrian Purposes" on the record map for Sector B. The portion of the Site used for horseback riding shall remain in its natural condition unless the Developer or the Association shall elect, in its discretion, to maintain or improve such property in a manner that is consistent with its use for horseback riding.

2. Obligation to Develop the Facilities. After a total of forty (40) Lots have been sold in the Developer Property, the Developer shall deliver to each Lot Owner written notice that the Developer is prepared to construct the swim and tennis facilities in accordance with the terms and conditions of this Declaration. If within one year from the date of mailing the notice the Developer shall receive a written request executed by not less than a majority of the Lot Owners, the Developer shall construct the swim and tennis facilities (the "Facilities") in accordance with Section 4 below and, at its discretion, may convey the Site to the Association formed in accordance with the provisions of Section 3 below. The majority of the Lot Owners shall be determined as of the date of receipt by the Developer of the Lot Owners' written request, and such determination shall exclude any lots owned by the Developer.

3. Formation of the Association. The Developer may, at its discretion, cause an owners' association (the "Association") to be organized under the Alabama Nonprofit Corporation Act, and the Articles of Incorporation and/or By-Laws of the Association shall include, among others, the following provisions:

(a) The Association shall be organized for the purpose of acquiring the Site and operating and maintaining the Facilities.

(b) The Association will admit as its initial members those Lot Owners who executed the written request for the Developer to construct the Facilities and to convey the Site to the Association in accordance with Section 2 above and any other Lot Owner who desires to use the Facilities and who requests to be admitted as a member. The Board of Directors of the Association may, with the prior consent of two-thirds of the members, amend the Articles of Incorporation and/or By-Laws to permit persons other than Lot Owners to become members.

(c) The Association will be managed by a Board of Directors consisting of five (5) directors, three of whom will be appointed by the Developer and two of whom will be elected by the members of the Association. The initial Board of Directors shall be elected within sixty (60) days after organization of the Association. The Developer will retain the right to appoint three directors to the Board of Directors so long as the Developer owns any portion of the Developer Property; provided that the Developer may, at its election, voluntarily relinquish such right prior to the sale of all of the Developer Property. After the right of the Developer to appoint three directors has terminated, all directors shall be elected by the members.

(d) The Association will have the right and power to assess its members in such amounts and at such times as shall be determined by a majority of the Board of Directors. Assessments shall be used for, among other things, the cost of operating and maintaining the Facilities. Such assessments may be in the form of an initial membership fee, monthly dues or assessments, and/or other periodic special assessments.

4. Construction, Maintenance and Operation of the Facilities.

(a) The Developer shall construct the Facilities promptly after the receipt of the Lot Owners' written request to develop and construct the Facilities in accordance with Section 2 above. Developer shall cause to be constructed on the portion of the Site designated as "Common Area Reserved for Swim and Tennis Facilities" a clubhouse, swimming pool, two tennis courts and parking area substantially in accordance with the site plan and

schematic design attached hereto as Exhibit A and incorporated herein by this reference. The Developer shall be responsible for the cost of construction of the Facilities and for the installation and extension of utilities to the Facilities.

(b) Upon completion of construction of the Facilities, the Developer shall operate the Facilities subject to the Easement herein granted, and the Developer shall be responsible for cost of the repair, maintenance, and operation of the Facilities until such time as the Site and the Facilities are conveyed to the Association in accordance with subparagraph (c) below. Developer reserves for itself, its successors and assigns with respect to the Site and the Facilities, and for the Association and its members, and the guests, family members and invitees of each of them, the right to use the Site and the Facilities in such manner and at such times as will not be inconsistent with the use of the Site and the Facilities by the Lot Owners as herein provided. Notwithstanding the foregoing, the Developer or the Association, in its capacity as the owner of the Facilities, may, at its election, limit the use of the Facilities to those Lot Owners who agree to become members of the Association and who agree to pay assessments as contemplated in Section 3 hereof.

(c) After the construction of the Facilities has been completed, the Developer may, at its discretion, convey the Site and the Facilities, including all personal property located on the Site, to the Association. In such event, Developer shall convey by statutory warranty deed fee simple title to the Site and the Facilities subject to mineral and mining rights not owned by the Developer, easements (including this Easement), ad valorem taxes for the current year (which shall be prorated as of the date of conveyance) and restrictions of record which do not unreasonably interfere with the use of the Site and the Facilities as herein contemplated. Upon conveyance of the Site and the Facilities to the Association, the Developer shall have no further responsibility for the maintenance, repair and operation of the Site and the Facilities. Upon delivery of the deed, the Association shall have the risk of loss with respect to the Facilities and shall have the responsibility for the payment of all costs and expenses relating to the maintenance, repair and operation of the Facilities, including without limitation, the payment for casualty and liability insurance, utilities, cleaning and janitorial services, landscape services, pool and tennis court maintenance, and ad valorem taxes.

5. Limitation of Liability. The Site and Facilities shall be used solely for non-commercial, recreational purposes, including without limitation, horseback riding, swimming and tennis, and the responsibility of the Developer and its successors and assigns with respect to the Site and Facilities (including, without limitation, the Association) for liability for injury or

damage to persons (including death) or property is intended to be limited by Section 35-15-1, et seq., of the Code of Alabama 1975 (the "Statute"). In any event, the Benefitted Parties by their use of the Site and/or Facilities under this Easement and Declaration, covenant and agree that the Developer and its successors and assigns (including the Association) shall have no duty to keep the Site and Facilities safe for entry and use by the Benefitted Parties or to give any warnings of hazardous conditions, use of structures or activities on or about the Site and/or the Facilities to the Benefitted Parties or any other person entering the Site and/or the Facilities, and Developer and its successors and assigns (including the Association) shall have no liability for any injury to person (including death) or property caused by any act or omission of a Benefitted Party or of any other person or relating to or arising out of the use of the Site and/or the Facilities by a Benefitted Party or any other person.

6. Enforcement. The Lot Owners and the Developer and their respective successors and assigns (including the Association) with respect to the Site and/or the Facilities shall have the right to enforce the easement, covenants, conditions and restrictions set forth in this Declaration and may proceed at law or in equity to compel compliance with the terms hereof and to prevent the violation or breach of any easement, covenants, conditions or restriction contained herein. Any such party seeking to enforce the terms hereof may give written notice of breach to the person in default or breach hereunder and if such default or breach is not cured within a reasonable time, the enforcing party may (but shall not be obligated to) cure such default, may pursue any and all rights at law or in equity and/or may bring an action against the defaulting party for any cost or expense incurred pursuant hereto (including without limitation any reasonably necessary or appropriate costs and expenses incurred by the enforcing party in curing or attempting to cure the default) or for specific performance of any action required hereby.

7. Termination and Amendment. This Declaration may be terminated with the written consent of all of the Lot Owners. This Declaration may be amended with the written consent of a majority of the Lot Owners; provided no such amendment shall modify or amend the provisions of paragraph 4 hereof without the consent of the Developer or its successors or assigns with respect to the Site and/or the Facilities; and provided further that no such amendment shall unreasonably interfere with the use of the Site and/or the Facilities as herein contemplated (unless agreed to by all of the Lot Owners).

8. Notice. Any notice required to be sent to any Lot Owner under the provisions of this Declaration shall be deemed to have been properly sent, if it is in writing, when mailed by United States Mail, postage prepaid, to the street address of the lot in

the Developer Property owned by the Lot Owner or to such other address as the Lot Owner shall have furnished to the Developer by written notice in accordance with this Section 8. Any notice required to be given to the Developer may be sent or given in writing by United States Mail, postage prepaid, to the following address: Chelsea Properties, Inc., c/o Burr & Forman, 420 N. 20th Street, Suite 3000, Birmingham, Alabama 35203, Attention: Jack P. Stephenson, Jr., or to such other address as shall be furnished by written notice to the Lot Owners in accordance with this Section 8. Any notice not sent or given as herein provided, if it is in writing, shall be deemed to have been delivered upon actual receipt by the party to whom it is addressed.

9. Run with Land. The Developer hereby declares that the provisions of this Declaration shall run with the land and shall be binding upon, and shall inure to the benefit of, the Developer Property and all parties having or acquiring any right or title in and to the Developer Property or any part thereof, and their successors in interest.

IN WITNESS WHEREOF, the undersigned Developer has caused this Amendment to be duly executed on this 20th day of October, 1992.

DEVELOPER:

CHELSEA PROPERTIES, INC.

By: James H. Estes
James H. Estes
President

The undersigned, as mortgagee of the property shown on the record maps for First Sector and Sector B and encumbered by this Declaration, does hereby consent to the terms and provisions of the Declaration as set forth herein.

FIRST ALABAMA BANK

By: Paul Watkins
Its: Vice President

STATE OF ALABAMA)
)
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that James H. Estes, whose name as President of Chelsea Properties, Inc., a corporation, 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 the above and foregoing instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand and official seal of office this 20th day of October, 1992.

Parker Diane Gula
Notary Public

My Commission Expires: 2.7.93

STATE OF ALABAMA)
)
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Charles L. Watkins, Jr., whose name as Vice President of First Alabama Bank, an Alabama banking association, 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 the above and foregoing instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said association on the day the same bears date.

Given under my hand and official seal of office this 28th day of October, 1992.

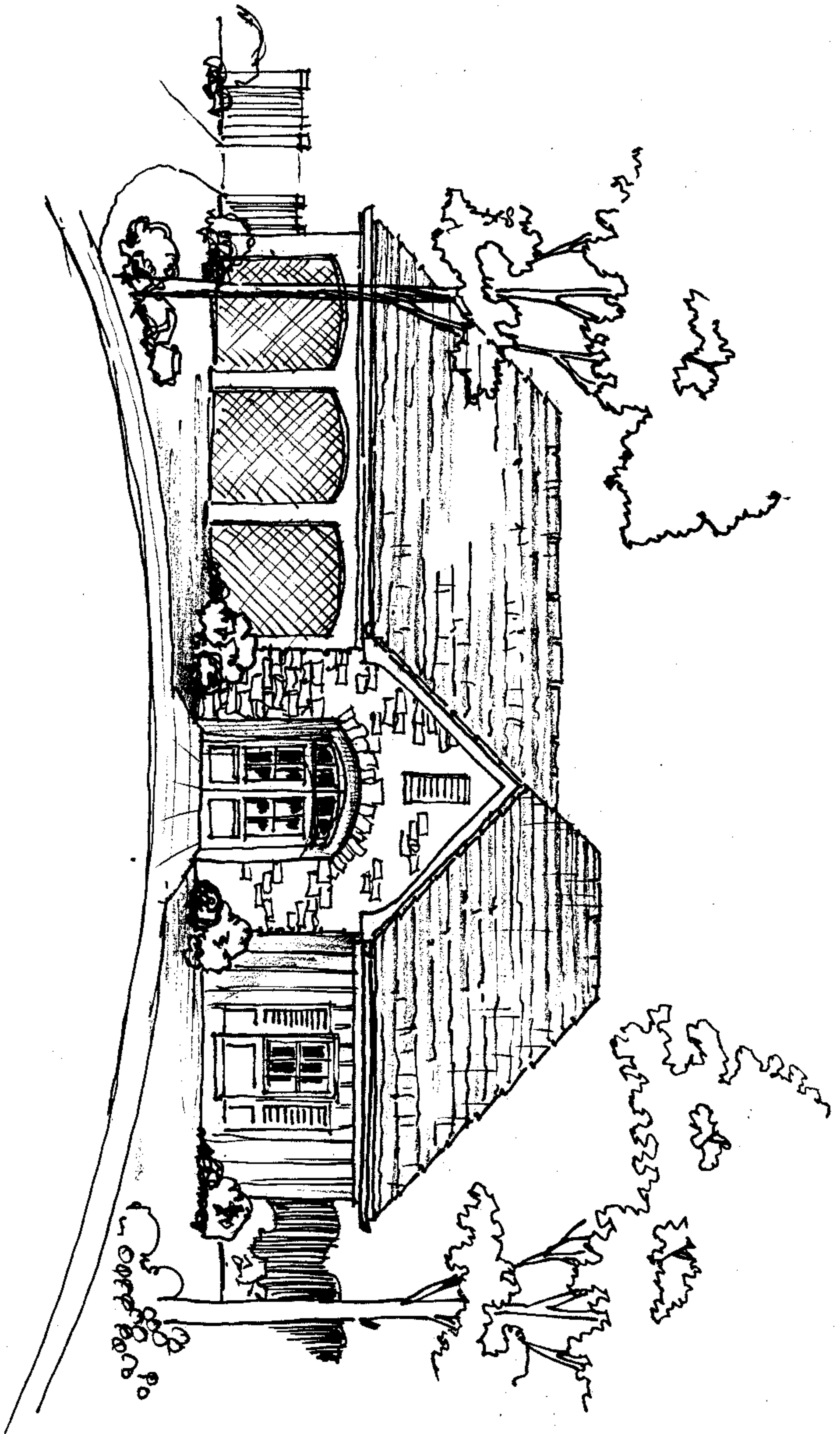
Dennis J. Pharris
Notary Public

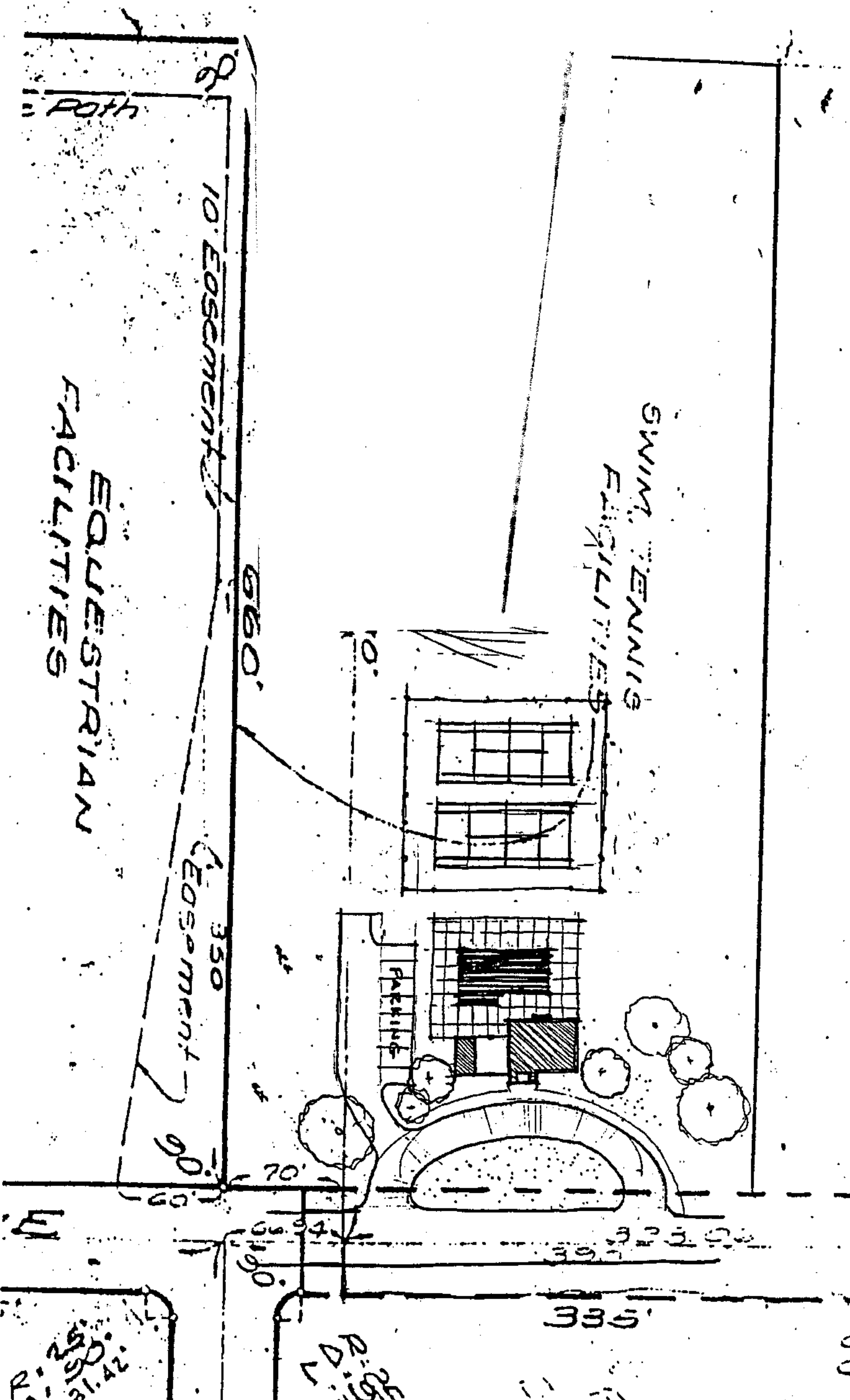
COMMISSION EXPIRES DECEMBER 11, 1993

My Commission Expires: _____

This instrument was prepared by Jack P. Stephenson, Jr., 420 North 20th Street, Suite 3000, Birmingham, Alabama 35203.

EXHIBIT A





Inst. # 1992-25020

10/28/1992-25020

04:49 PM CERTIFIED

SHELBY COUNTY JUDGE OF PROBATE

009 MCO 27.50