

THIS DOCUMENT IS BEING RE-RECORDED TO ATTACH AND INCORPORATE
THE JOINDER AND SUBORDINATION OF LIENHOLDER HERETO.

This instrument prepared by:

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Birmingham, Alabama 35203
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Inst # 1994-08120

03/14/1994-08120
10:20 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
011 MCD 33.50

STATE OF ALABAMA)
SHELBY COUNTY)

**DECLARATION OF EASEMENTS, COVENANTS
AND RESTRICTIONS**

THIS DECLARATION is made as of the 14th day of March, 1994, by
CHARLES E. MORGAN, a married man, DANIEL G. MORGAN, a married man,
and NIEL C. MORGAN, JR., an unmarried man, and AMSOUTH BANK, N.A.
and CHARLES E. MORGAN, as executors of the Estate of Nathaniel
Chase Morgan a/k/a Niel C. Morgan a/k/a Neil C. Morgan,
(collectively, "Grantor").

R E C I T A L S

A. By Statutory Warranty Deed of even date herewith, Grantor
has conveyed unto Wen-Alabama, Inc., an Alabama corporation
("Grantee") that certain parcel of real estate more particularly
described on Exhibit "A" attached hereto and incorporated herein by
reference located in Shelby County, Alabama, as recorded in Real
Volume Inst # 1994, Page 08119, in the Probate Office of Shelby
County, Alabama. The foregoing real estate is herein referred to
as "Parcel I."

B. Grantor is the owner of certain land contiguous to Parcel
I (the "Gross Parcel") as more particularly described on Exhibit
"B" attached hereto and incorporated herein by reference. Grantor
has agreed to establish certain easements, restrictions, benefits
and obligations burdening the Gross Parcel for the benefit of and
appurtenant to Parcel I.

AGREEMENT

NOW, THEREFORE, in consideration of the sum of Ten and No/100
Dollars in hand paid to Grantor, and other good and valuable
consideration, the receipt and sufficiency of which is hereby
acknowledged, Grantor does hereby grant, bargain, sell, and convey,
to Grantee, upon the conditions and subject to the limitations
hereinafter set forth, the easements hereinafter set forth.

TO HAVE AND TO HOLD said easements unto Grantee, its
successors and assigns.

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Grantor covenants with Grantee that it is the owner in fee of the real property herein conveyed and has a good right to execute this Declaration of Easements, Covenants and Restrictions and to grant said easements.

1. **TEMPORARY CONSTRUCTION EASEMENT.** Grantor does hereby declare, grant and establish for the benefit of Parcel I a temporary construction easement appurtenant to Parcel I over the Gross Parcel for the purpose of filling, installing and constructing a slope to support Grantee's parking lot and adjacent land at an elevation of at least 460.7+/- feet above sea level. This temporary construction easement shall cease on September 14, 1994. Grantee shall, and hereby agrees that it will, at its sole expense, promptly after said construction, restore the surface of the area disturbed in said construction. Such surface restoration shall include, without limitation, revegetation of the area, cleaning all debris, and otherwise complying with all applicable federal, state, and local laws and the rules and regulations of any governmental authority or agency having jurisdiction thereover, including but not limited to the Alabama Department of Environmental Management and the Alabama Department of Conservation and Natural Resources. The restoration required under this agreement shall be as reasonably required by Grantor.

2. **SLOPE EASEMENT.** Grantor does hereby declare, grant and establish for the benefit of Parcel I a temporary easement appurtenant to Parcel I for the purpose of maintaining, repairing, replacing and renewing a slope to support Grantee's parking lot and adjacent land at an elevation of at least 460.7+/- feet above sea level. Said easement shall be located only on that certain parcel (the "Slope Easement Parcel") of land described on Exhibit "C" attached hereto and incorporated herein by reference. Grantor shall be allowed to terminate said slope easement at any time by filling the Slope Easement Parcel so that it is raised to an elevation substantially the same as Parcel I, and said easement shall cease at such time as the area within the Slope Easement Parcel has been so filled.

3. **NON-EXCLUSIVE INGRESS AND EGRESS EASEMENT.** Grantor does hereby declare, grant and establish for the benefit of Parcel I a perpetual, non-exclusive easement appurtenant to Parcel I for vehicular and pedestrian ingress and egress to and from Parcel I, said easement to be located over, upon and across that certain parcel of land which is more particularly described on Exhibit "D" attached hereto and made a part hereof (the "Ingress/Egress Easement Area"), so as to provide direct access from Parcel I to Alabama Highway 119.

4. **RESTRICTIVE COVENANT.** Grantor hereby covenants and agrees that the portion of the Gross Parcel which is located within two hundred fifty feet (250') of Alabama Highway 119 shall at no time be used for a restaurant use, the primary business of which is

the sale of hamburgers or hamburger products. By this restriction, the parties intend to prohibit use of the restricted property for hamburger franchise fast food restaurants, such as McDonald's, Burger King, Hardee's, Sonic, Checkers, Rally's, Hot-N-Now, Milo's, etc. (the foregoing list is by way of example only and is not to be limited to the named restaurants), and also to prohibit non-franchise fast food hamburger restaurants and the drive-through-only hamburger shops; provided however, this restriction will not prohibit use of the restricted property for bars and lounges whose primary menu item happens to be hamburgers, nor will it prohibit use for "sit-down" or "family" restaurants such as those currently operated by Shoney's, Denny's or Chili's, regardless of what their product mix happens to be. For the purpose of this restriction, a restaurant has the aforesaid products as its primary business if fifty percent (50%) or more of its gross sales, exclusive of taxes, beverage and dairy product sales, consists of sales of hamburgers and hamburger products. This restriction shall burden and run with the Gross Parcel for a period of five (5) years from the date of opening of business of the restaurant located on Parcel I, and shall be limited to only that portion of the Gross Parcel which has frontage on and is located within Two Hundred and fifty Feet (250') of Alabama Highway 119 (or any service roads which may be constructed adjacent thereto) and shall benefit Parcel I, and the owners, successors, and assigns thereof.

5. AGREEMENTS RUN WITH LAND. Both the benefits and the burdens of all easements, restrictions, benefits and obligations established by this Declaration of Easements, Covenants and Restrictions shall run with and bind the lands described herein, and shall be binding upon and inure to the benefit of any and all owners thereof and their respective tenants, licensees, invitees, employees, personal representatives, heirs, successors and assigns, and, except as herein expressly provided to the contrary, shall be perpetual.

6. INTERPRETATION. The easements, restrictions, benefits and obligations set forth herein shall not be strictly construed, but shall be interpreted so as to allow the owners of all lands affected hereby to enjoy the commercially reasonable use and benefit of the same while fulfilling the essential purposes of such easements, covenants and restrictions.

* * * *

IN WITNESS WHEREOF, Grantor has caused this DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS to be executed as of the day and year first above written.

GRANTOR:

Charles E. Morgan
CHARLES E. MORGAN, a married man

D. G. Morgan
DANIEL G. MORGAN, a married man

Niel C. Morgan, Jr.
NIEL C. MORGAN, JR., an unmarried man

AMSOUTH BANK, N.A., as executor of the
Estate of Nathaniel Chase Morgan a/k/a
Niel C. Morgan a/k/a Neil C. Morgan

By: D. Wayne Childress
D. Wayne Childress
its Vice President and Trust Real
Estate Officer

Charles E. Morgan
CHARLES E. MORGAN, as executor of the
Estate of Nathaniel Chase Morgan a/k/a
Niel C. Morgan a/k/a Neil C. Morgan

STATE OF Alabama
COUNTY OF Jackson

I, Harriett Lumsden, a notary public in and for said County in said State, hereby certify that CHARLES E. MORGAN, a married man, whose name is signed to the foregoing Declaration of Easements, Covenants and Restrictions, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he executed the same voluntarily as of the day the same bears date. Given under my hand this 11th day of March, 1994.

Harriett Lumsden
Notary Public
My Commission Expires: 5/18/94

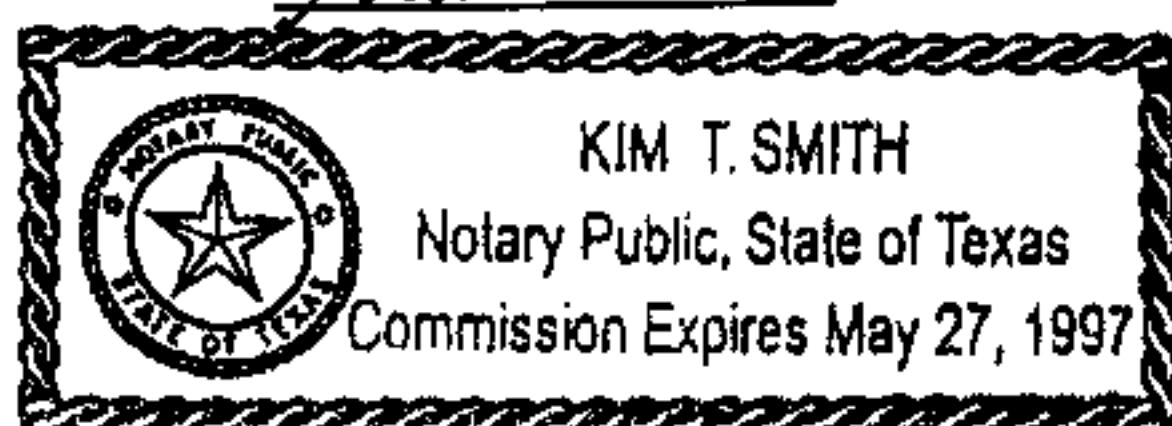
STATE OF COLORADO)
COUNTY OF DENVER)

I, MARGIE I. TEIXEIRA, a notary public in and for said County in said State, hereby certify that DANIEL G. MORGAN, a married man, whose name is signed to the foregoing Declaration of Easements, Covenants and Restrictions, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he executed the same voluntarily as of the day the same bears date. Given under my hand this 9th day of March, 1994.

Margie I. Teixeira
Notary Public
My Commission Expires: 3/9/96

STATE OF Texas)
COUNTY OF Harris)

I, KIM T. SMITH, a notary public in and for said County in said State, hereby certify that NIEL C. MORGAN, JR., an unmarried man, whose name is signed to the foregoing Declaration of Easements, Covenants and Restrictions, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he executed the same voluntarily as of the day the same bears date. Given under my hand this 10th day of March, 1994.



Kim T. Smith
Notary Public
My Commission Expires: May 27, 1997

STATE OF Alabama)
COUNTY OF Fiscal)

I, Harriett Lurnpseed, a Notary Public in and for said County, in said State, hereby certify that D. WAYNE CHILDRESS, whose name as Vice President and Trust Real Estate Officer of AMSOUTH BANK, N.A., a national banking association, as executor of the Estate of Nathaniel Chase Morgan a/k/a Niel C. Morgan a/k/a Neil C. Morgan, is signed to the foregoing Deed, 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, acting in its capacity as executor of the Estate of Nathaniel Chase Morgan a/k/a Niel C. Morgan a/k/a Neil C. Morgan.

Given under my hand this the 11th day of March, 1994.

Harriett Lurnpseed
Notary Public
My Commission Expires: 5/18/94

STATE OF Alabama
COUNTY OF Jackson

I, Harriett Furness, a Notary Public in and for said County, in said State, hereby certify that CHARLES E. MORGAN, whose name as executor of the Estate of Nathaniel Chase Morgan a/k/a Niel C. Morgan a/k/a Neil C. Morgan, is signed to the foregoing Deed, and who is known to me, acknowledged before me on this day, that being informed of the contents of said instrument, he executed the same voluntarily for acting in his capacity as executor of the Estate of Nathaniel Chase Morgan a/k/a Niel C. Morgan a/k/a Neil C. Morgan.

Given under my hand this the 1st day of March, 1994.

Harriett Furness
Notary Public
My Commission Expires: 5/18/94

EXHIBIT "A"

LEGAL DESCRIPTION "PARCEL I"

Commence at the Northwest corner of the Southeast 1/4 of Section 31, Township 19 South, Range 2 West, thence run in an Easterly direction along the North line of the Southeast 1/4 for a distance of 329.53'; thence turn an angle to the right of 60 degrees 17 minutes 38 seconds and run in a Southeasterly direction for a distance of 1009.25 feet to the point of beginning, from the point of beginning thus obtained continue along the last described course for a distance of 250.00 feet to a point on the Northwest right of way of Alabama Highway No. 119, thence turn an angle to the right of 88 degrees 06 minutes, 12 seconds and run in a Southwesterly direction along the Northwest right of way for a distance of 160.00 feet; thence turn an angle to the right of 91 degrees, 53 minutes, 48 seconds and run in a Northwesterly direction for a distance 250.00 feet; thence turn an angle to the right of 88 degrees, 06 minutes, 12 seconds and run in a Northeasterly direction for a distance of 160.00 feet to the point of beginning.

EXHIBIT "B"
LEGAL DESCRIPTION "GROSS PARCEL"

page 1 of 2

A parcel of land located in Section 31, Township 19 South, Range 2 West, Shelby County, Alabama, and being more particularly described as follows: Commence at the northeast corner of the southwest one-quarter of Section 31, Township 19 South, Range 2 West; thence run in a westerly direction along the northern line of said quarter section for a distance of 301.28 feet to the point of beginning. From the point of beginning thus obtained, thence turn an angle to the left of 51 degrees 49 minutes 38 seconds and run in a southwesterly direction for a distance of 524.90 feet; thence turn an angle to the right of 15 degrees 42 minutes 53 seconds and run in a southwesterly direction for a distance of 15.00 feet; thence turn an angle to the left of 102 degrees 10 minutes 58 seconds and run in a southeasterly direction for a distance of 195.60 feet; thence turn an angle to the right of 13 degrees 53 minutes 06 seconds and run in a southeasterly direction for a distance of 185.50 feet; thence turn an angle to the right of 3 degrees 06 minutes 00 seconds and run in a southeasterly direction for a distance of 201.40 feet; thence turn an angle to the right of 3 degrees 14 minutes 59 seconds and run in a southeasterly direction for a distance of 894.19 feet to the northwesterly right-of-way line of Alabama Highway 119; thence turn an angle to the left of 93 degrees 40 minutes 31 seconds and run in a northeasterly direction along said right-of-way for a distance of 218.06 feet; thence turn an angle to the left of 30 degrees 22 minutes 07 seconds and run in a northeasterly direction for a distance of 115.53 feet; thence turn an angle to the right of 30 degrees 30 minutes 06 seconds and run in a northeasterly direction for a distance of 676.45 feet; thence turn an angle to the left of 88 degrees 06 minutes 12 seconds and run in a northwesterly direction for a distance of 1379.89 feet along the southeast boundary line of Block 1 of Cahaba Valley Park North; thence turn an angle to the left of 60 degrees 14 minutes 01 seconds and continue along said boundary line in a westerly direction for a distance of 1120.29 feet; thence turn an angle to the left of 93 degrees 29 minutes 25 seconds and run in a southerly direction for a distance of 105.38 feet to a point on the northern line of the southwest one-quarter of said section; thence turn an angle to the left of 86 degrees 34 minutes 12 seconds and run in an easterly direction along said quarter-line for a distance of 542.52 feet to the point of beginning. Said parcel contains 1,572,694 square feet or 36.1041 acres.

Less and except:

Commence at the Northwest corner of the Southeast 1/4 of Section 31, Township 19 South, Range 2 West, thence run in an Easterly direction along the North line of the Southeast 1/4 for a distance of 329.53'; thence turn an angle to the right of 60 degrees 17 minutes 38 seconds and run in a Southeasterly direction for a distance of 1009.25 feet to the point of beginning, from the point of beginning thus obtained

EXHIBIT "B"
LEGAL DESCRIPTION "GROSS PARCEL"

page 2 of 2

continue along the last described course for a distance of 250.00 feet to a point on the Northwest right of way of Alabama Highway No. 119, thence turn an angle to the right of 88 degrees 06 minutes, 12 seconds and run in a Southwesterly direction along the Northwest right of way for a distance of 160.00 feet; thence turn an angle to the right of 91 degrees, 53 minutes, 48 seconds and run in a Northwesterly direction for a distance 250.00 feet; thence turn an angle to the right of 88 degrees, 06 minutes, 12 seconds and run in a Northeasterly direction for a distance of 160.00 feet to the point of beginning.

EXHIBIT "C"
LEGAL DESCRIPTION "SLOPE EASEMENT PARCEL"

COMMENCE AT THE NORTHWEST CORNER OF THE SOUTHEAST 1/4 OF SECTION 31, TOWNSHIP 19 SOUTH, RANGE 2 WEST, THENCE RUN IN AN EASTERLY DIRECTION ALONG THE NORTH LINE OF THE SOUTHEAST 1/4 FOR A DISTANCE OF 329.53 FEET; THENCE TURN AN ANGLE TO THE RIGHT OF 60 DEGREES, 17 MINUTES, 38 SECONDS AND RUN IN A SOUTHEASTERLY DIRECTION FOR A DISTANCE OF 979.25 FEET TO THE POINT OF BEGINNING; THENCE 88 DEGREES, 06 MINUTES, 12 SECONDS RIGHT IN A SOUTHWESTERLY DIRECTION FOR A DISTANCE OF 220 FEET; THENCE 88 DEGREES, 06 MINUTES, 12 SECONDS LEFT IN A SOUTHEASTERLY DIRECTION FOR A DISTANCE OF 280 FEET TO A POINT ON THE NORTHWESTERLY RIGHT OF WAY LINE OF ALABAMA HWY # 119; THENCE 91 DEGREES, 53 MINUTES, 48 SECONDS LEFT IN A NORTHEASTERLY DIRECTION AND ALONG SAID RIGHT OF WAY LINE FOR A DISTANCE OF 60 FEET; THENCE 88 DEGREES, 06 MINUTES, 12 SECONDS LEFT IN A NORTHWESTERLY DIRECTION FOR A DISTANCE OF 250 FEET; THENCE 88 DEGREES, 06 MINUTES, 12 SECONDS RIGHT IN A NORTHEASTERLY DIRECTION FOR A DISTANCE OF 160 FEET; THENCE 88 DEGREES, 06 MINUTES, 12 SECONDS LEFT IN A NORTHWESTERLY DIRECTION FOR A DISTANCE OF 30 FEET TO THE POINT OF BEGINNING.

EXHIBIT "D"
LEGAL DESCRIPTION "INGRESS/EGRESS EASEMENT PARCEL"

COMMENCE AT THE NORTHWEST CORNER OF THE SOUTHEAST 1/4 OF SECTION 31, TOWNSHIP 19 SOUTH, RANGE 2 WEST, THENCE RUN IN AN EASTERLY DIRECTION ALONG THE NORTH LINE OF THE SOUTHEAST 1/4 FOR A DISTANCE OF 329.53 FEET; THENCE TURN AN ANGLE TO THE RIGHT OF 60 DEGREES, 17 MINUTES, 38 SECONDS AND RUN IN A SOUTHEASTERLY DIRECTION FOR A DISTANCE OF 979.25 FEET; THENCE 88 DEGREES, 06 MINUTES, 12 SECONDS RIGHT IN A SOUTHWESTERLY DIRECTION FOR A DISTANCE OF 220 FEET; THENCE 88 DEGREES, 06 MINUTES, 12 SECONDS LEFT IN A SOUTHEASTERLY DIRECTION FOR A DISTANCE OF 215 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE ALONG LAST DESCRIBED COURSE A DISTANCE OF 65 FEET TO A POINT ON THE NORTHWESTERLY RIGHT OF WAY LINE OF ALABAMA HWY # 119; THENCE 91 DEGREES, 53 MINUTES, 48 SECONDS LEFT IN A NORTHEASTERLY DIRECTION AND ALONG SAID RIGHT OF WAY LINE FOR A DISTANCE OF 60 FEET ; THENCE 88 DEGREES, 06 MINUTES, 12 SECONDS LEFT IN A NORTHWESTERLY DIRECTION FOR A DISTANCE OF 65 FEET; THENCE 91 DEGREES, 53 MINUTES, 48 SECONDS LEFT IN A SOUTHWESTERLY DIRECTION FOR A DISTANCE OF 60 FEET TO THE POINT OF BEGINNING.

Inst # 1994-08120

03/14/1994-08120
10:20 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
011 MCD 33.50

Inst # 1994-08120

This instrument was prepared by:

Stephen C. Jacobs
3200 Texas Commerce Tower
Houston, Texas 77002

JOINDER AND SUBORDINATION OF LIENHOLDER

The undersigned, COMPASS BANK, ^{Houston} a Texas banking association, successor in interest by merger to River Oaks Bank, the present legal and equitable owner and holder of all rights and benefits under the Future Advance Mortgage, Assignment of Rents and Leases and Security Agreement (as the same may have been supplemented or amended including, without limitation, pursuant to that certain Supplemental Mortgage recorded under Instrument No. 1992-19441 in the Office of the Judge of Probate, Shelby County, Alabama, the "Mortgage") by and between Nathaniel Chase Morgan, Jr., a/k/a Niel C. Morgan, and River Oaks Bank recorded under Instrument No. 1992-17965 in the Office of the Judge of Probate of Shelby County, Alabama, does hereby consent to and join in the foregoing Declaration of Easements, Covenants and Restrictions ("Declaration") and hereby subordinates the liens, security interests and other rights under the Mortgage to the Declaration.

This consent and joinder shall not be construed to operate as a release of the Mortgage or the rights, benefits, liens and security interests owned and held by the undersigned, or any part thereof.

COMPASS BANK

By: Frank D. Heuszel v.p.

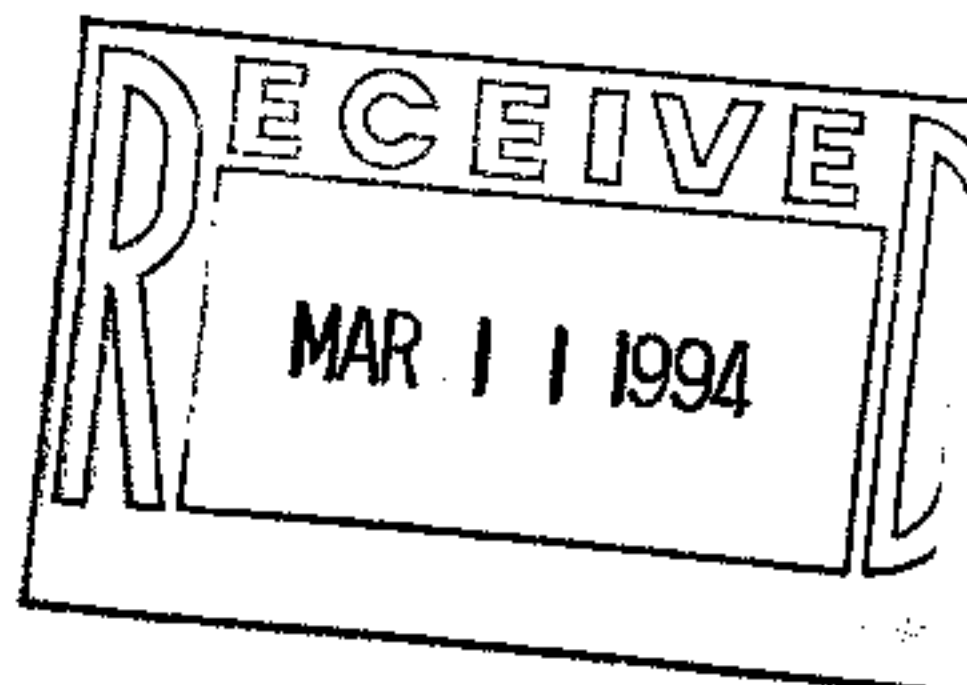
Name: FRANK D. HEUSZEL

Title: Vice President

THE STATE OF Texas §
COUNTY OF Harris §

This instrument was acknowledged before me on the 11th day of March, 1994, by Frank Heuszel, Vice President of Compass Bank, ^{Houston} a Texas banking association, on behalf of said association.

03/28/1994
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SHELBY COUNTY JUDGE OF PROBATE
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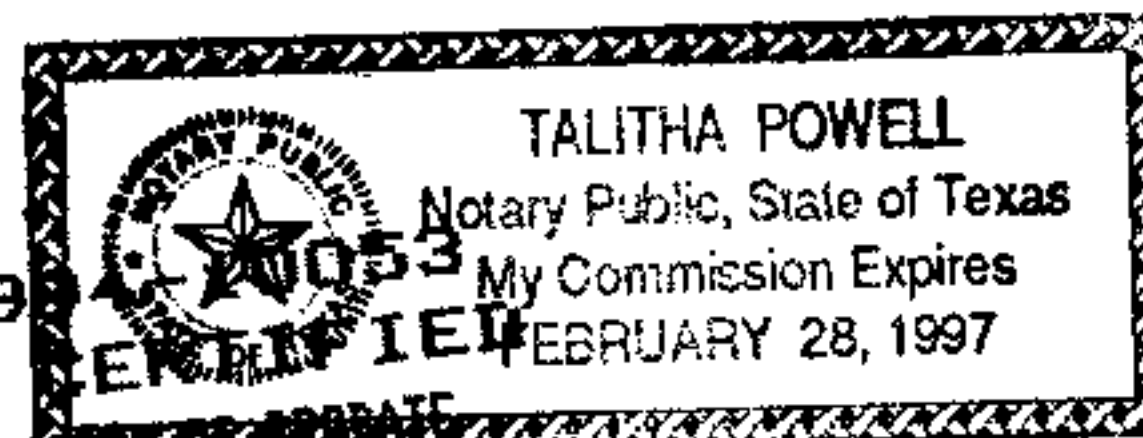


Talitha Powell

Notary Public in and for
the State of Texas

Print Name: Talitha Powell

Inst. # 1994-10053 My Commission Expires: 2/28/97



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