

Inst # 1994-15894

STATE OF ALABAMA )

SHELBY COUNTY )

05/17/1994-15894  
09:08 AM CERTIFIED

SHELBY COUNTY JUDGE OF PROBATE  
009 SNA 28.50

SIGNED ORIGINAL  
1/11/94

**OPTION AGREEMENT**  
**BY AND BETWEEN EBSCO REALTY**  
**AND THORNTON CONSTRUCTION COMPANY, INC.**  
**REGARDING GREYSTONE HIGHLANDS**

In consideration of the premises and the mutual covenants and promises set forth in this Agreement, Thornton Construction Company, Inc. (hereinafter referred to as Thornton) and EBSCO Realty (hereinafter referred to as EBSCO) agree, in good faith and under the terms and conditions set forth herein, that EBSCO will improve and develop certain real property to sell or lease as hereinafter described and Thornton will supervise the improvement and development of said property. The real property to be improved and developed is owned in fee simple by EBSCO and consists of approximately 47 acres of land located on the southwestern side of Highway 280 across from Hugh Daniel Drive (the "Property"). The Property is located in the City of Hoover, Shelby County, Alabama and the parties intend that the Property will become part of the planned unit development known as Greystone. The Property is to be improved and developed into two sections: (1) approximately fifteen (15) acres will be developed as commercial property (the "Commercial Section"), (2) approximately fifteen (15) acres will be developed into finished single family residential lots (the "Residential

Section") and (3) approximately seventeen (17) acres is to be designated and maintained as buffer between the Commercial Section and the Residential Section. All lots referred to herein (the "Lots") are located within the Residential Section and approximately seventy-five (75) Lots are planned for the proposed Residential Section, which will be known as Greystone Highlands. The boundary survey attached hereto as Exhibit "A" describes the Property and shows the preliminary overall Lot and street layout for both Sections. The Property is legally described as follows:

The NE1/4 of the NW1/4, West of U.S. Highway 280; The North 10 acres of the SE1/4 of NW1/4; Also, beginning at the SE corner of the NE1/4 of NW1/4, run North to the West right of way of U.S. Highway 280; thence Southeast and South along said right of way to the South line of the NW1/4 of NE1/4; thence West along South line of the NW1/4 of NE1/4 to the point of beginning. All in Section 5, Township 19 South, Range 1 West, Shelby County, Alabama.

Being the same property conveyed from W. Paul Lacey and wife, Mollie E. Lacey; Eugene D. Lacey and wife, Betty Jo Lacey; Madge Lacey Seifert, a widow; Mary Lacey Hoyle and spouse Wilmer R. Hoyle; Julia Lacey Jarnigan and spouse, William Jarnigan to EBSCO Industries, Inc. dated July 30, 1982 and filed for record in the Probate Office of Shelby County, Alabama on August 16, 1983 at 10:59 A.M. and recorded in Deed Book 349, Page 227.

1. CONTINGENCIES. (a) The obligations of EBSCO and Thornton to perform under the terms of this Agreement are subject to and contingent upon the satisfaction of all of the

following conditions as soon as possible (the "Conditions Precedent"):

(1) rezoning of the Residential Section by the City of Hoover, Alabama for PR 1 Medium Density development;

(2) acceptance of the Property into the Greystone Planned Unit Development (the "Greystone PUD");

(3) approval by the appropriate and applicable governing entities of ingress to and egress from the Property by way of Highway 280, particularly so that those egressing from the Property may directly cross the east-bound lanes of Highway 280 and access the west-bound lanes of Highway 280;

(4) the submission of evidence satisfactory to Thornton that utilities, water and sewer services will be available and accessible to the Property as of the date that improvement and development of the Property is commenced;

(5) the submission by EBSCO to Thornton of all, if any, existing surveys, environmental assessments and geotechnical information pertaining to the Property, the substance of which shall be satisfactory to Thornton as to the suitability of the respective Sections for single family residential development and commercial development;

(6) an environmental assessment and geotechnical investigation of the Property, performed at Thornton's option, the substance of which shall be satisfactory to Thornton as to the suitability of the respective Sections



for single family residential development and commercial development;

(7) the submission by EBSCO to Thornton of information as to the condition of EBSCO's title to the Property, particularly as to easements and restrictions on the Property which may affect the suitability of the respective Sections for single family residential development and commercial development;

(8) the application by EBSCO for and the issuance by the Alabama Department of Environmental Management to EBSCO of an NPDES permit for storm water discharge for the Property during all construction and development activity contemplated hereunder.

(b) On or about the first day of every month during which the Conditions Precedent are unsatisfied, the parties shall confer with each other as to the status of the satisfaction of the Conditions Precedent.

2. **THORNTON.** Beginning on or before the thirtieth day after satisfaction of the Conditions Precedent, Thornton will supervise the improvement and development of the Property as follows:

(a) Thornton will supervise the improvement and development of the Residential Section into finished Lots ready for single family residential construction. Subject to EBSCO's right of approval, said supervision includes directing and

coordinating the following: engineering plans preparation and approval, subcontract preparation, clearing and grubbing, site grading, geotechnical reviews and tests, engineering stake-out, storm sewer installation, sanitary system installation, domestic and fire protection water service, erosion control, curb and gutter base and asphalt paving, entrance wall plans and construction, landscaping and other work which may be necessary to develop the Property into individual Lots as per the final mutually agreed upon development plan.

(b) Thornton will supervise the improvement and development of the Commercial Section into sites ready for commercial construction. Subject to EBSCO's right of approval, said supervision includes directing and coordinating the following: engineering plans preparation and approval, subcontract preparation, clearing and grubbing, site grading, geotechnical reviews and tests, engineering stake-out, storm sewer installation, and erosion control as per the final mutually agreed upon development plan. Said supervision also includes stubbing utilities, including sanitary sewer, water, power, and telephone, from off-site to the boundary of the Commercial Section.

(c) In the event Thornton exercises its exclusive option for the purchase of any Lot as described hereinbelow, Thornton and/or its marketing or sales agents agree to use best efforts, during the marketing and sale of the Lot to the

ultimate purchaser, to market the lending services of Highland Bank.

3. EBSCO. (a) Subject to Section 3(b) below, EBSCO will bear all costs of improving and developing the Property as described in Section 2 hereof, including, but not limited to, preliminary costs for studies, tests, engineering work, plan development and approval, costs of subcontractors, material suppliers, service providers and any other costs associated with all phases of the development of the Property.

(b) EBSCO's liability for costs pursuant to Section 3(a) is limited to One Million Dollars <sup>(+950,000)</sup> ~~(\$1,000,000.00)~~ for the Residential Section and Six Hundred Thousand Dollars (\$600,000.00) for the Commercial Section, totalling costs of <sup>(+1,550,000)</sup> ~~(\$1,600,000.00)~~ for the improvement and development of the Property. In the event EBSCO's total actual costs for the improvement and development of the Residential and Commercial Sections exceed said <sup>+1,550,000</sup> ~~\$1,600,000.00~~, EBSCO will bear and pay the excess amount and the Lot Price as defined in Section 4(f) shall be increased by <sup>+1,550,000</sup> ~~\$1,600,000.00~~ divided by 75 (or the exact number of Lots if different therefrom). In the event EBSCO's total actual costs for improvement and development of the Residential and Commercial Sections pursuant to Section 3(a) above is less than <sup>+1,550,000</sup> ~~\$1,600,000.00~~, EBSCO shall pay to Thornton one-third (1/3) of the difference between said

*\$10 + 1,550,000 w/*  
~~\$1,600,000.00~~ and the actual costs. Such payment to Thornton shall be due and payable on or before one hundred and eighty (180) days from the first day of Thornton's first fiscal year, as hereinafter defined.

**4. THORNTON'S EXCLUSIVE OPTION.**

*W/*  
*1/11/94*  
*QX*  
(a) Grant of Option. Thornton will supervise the improvement and development of the Property, as described in Section 2 above, at no cost to EBSCO. In consideration of Thornton's said supervision, EBSCO grants to Thornton the exclusive right and option to purchase each Lot in the Residential Section, for the Lot Price as defined hereinafter, until such time as Thornton does not purchase the minimum of thirty <sup>FIVE</sup> (35) Lots per fiscal year.

(b) Fiscal Years. The first fiscal year shall begin on the first day of the month following the later of the recording of the record maps or the release of the Lots for single family residential construction by the governing municipalities and/or agencies. The end of a fiscal year shall be at 5:00 p.m. on the day before the beginning of the succeeding fiscal year. Subject to said map recordings and Lot release, it is the intention of the parties that the first fiscal year will begin on or about June 1, 1994.

(c) Agreement to Exercise Option in First Fiscal Year. Thornton hereby agrees to exercise its exclusive right and option for the purchase of seven (7) Lots within



thirty (30) days of the beginning of the first fiscal year. Said seven (7) Lots shall be chosen by the mutual agreement of the parties, ready and released for single family residential construction, and included in the thirty<sup>FIVE</sup> (35) Lot minimum for the first fiscal year. WLT  
1/11/94

(d) Forfeiture of Option. Failure of Thornton to exercise its option with respect to a minimum thirty<sup>FIVE</sup> (35) Lots in any fiscal year shall terminate Thornton's exclusive right and option to purchase any additional Lots. WLT  
1/11/94

(e) Conveyance. For each Lot with respect to which Thornton exercises its option, EBSCO shall convey to Thornton clear title by general warranty deed, free of all liens, mortgages and encumbrances, other than easements and restrictions of record which are satisfactory to Thornton. At the closing of each conveyance to Thornton, ad valorem taxes, library and fire dues, and other property assessments, if any, shall be prorated as of the date of closing.

(f) Lot Price. Subject to Section 3(b) hereinabove, the "Lot Price" for each Lot is THIRTY THOUSAND AND NO/100 DOLLARS (\$30,000.00). The Lot Price shall not increase or decrease without the mutual consent of Thornton and EBSCO. The Lot Price is based upon estimated improvement costs.



5. MISCELLANEOUS.

(a) Assignment. This Agreement may not be assigned in whole or in part by either of the parties hereto without the prior written consent of the other party, which consent shall not be unreasonably withheld. This Agreement shall inure to the benefit of and be binding on and enforceable against the successors and assigns of the parties.

(b) Binding Effect. The parties intend that the Agreement and its terms and conditions as set forth herein be binding. Each party shall be responsible for the payment of all costs and expenses, including court costs and attorney's fees, incurred by the other party in enforcing any provisions of this Agreement.

IN WITNESS WHEREOF, EBSCO and Thornton have executed and effected this Agreement this 11th day of May, 1994.

EBSCO REALTY, an Alabama

By: [Signature]

Elton B. Stephens, Jr.  
Its VICE PRESIDENT

THORNTON CONSTRUCTION COMPANY,  
INC., an Alabama corporation

By: [Signature]

Gary R. Dent  
Vice President

By: [Signature]

William L. Thornton, III  
Vice President

At # 1994-15894

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