

STATE OF ALABAMA)
SHELBY COUNTY)

~~FINAL~~ DRAFT
2/20/95

AGREEMENT

This Agreement made this 20 day of February, 1995 by and between INTERSTATE RESTAURANT INVESTORS, AN ALABAMA GENERAL PARTNERSHIP and FRANK C. ELLIS, JR. (collectively referred to as "IRI") and UNION STATE BANK ("Bank").

WHEREAS, on this date, IRI has acquired from Addie Smith, Mary Cline Martin, Jean Cline Pryor, Rollin L. Johnson, Jr. and James Thomas Johnson (herein collectively, "Johnson") that certain real property located in Shelby County, Alabama described on Exhibit "A" attached hereto and incorporated by reference herein (the "IRI Parcel"); and

WHEREAS, IRI, on this date, has also entered a perpetual non-exclusive cross easement with Johnson for ingress, egress and utilities over and across the real property located in Shelby County, Alabama described on Exhibit "B" attached hereto and incorporated by reference herein (the "Johnson Easement"); and

WHEREAS, IRI, on this date, has also acquired a perpetual non-exclusive easement from Jenkins Development Company, L.L.C., an Alabama limited liability company ("Jenkins") for ingress, egress and utilities over and across the real property located in Shelby County, Alabama described on Exhibit "C" attached hereto and incorporated by reference herein (the "Jenkins Easement"); and

WHEREAS, IRI, on this date, has conveyed to Bank a portion of the IRI Parcel being that certain real property located in Shelby

County, Alabama described on Exhibit "D" attached hereto and incorporated by reference herein (the "Bank Parcel"); and

WHEREAS, as a result of the conveyance to the Bank of the Bank Parcel, IRI has retained fee simple ownership to the IRI Parcel less and except the Bank Parcel, the result being defined herein as the IRI Resulting Parcel; and

WHEREAS, IRI, on this date, has given Bank a mortgage (the "Mortgage") on the IRI Resulting Parcel; and

WHEREAS, the parties believe that the Alabama Department of Transportation (the "Department") is in the process of condemning portions of the IRI Parcel in conjunction with the Department's proposed widening of Alabama Highway 119 (the "Condemnation"); and

WHEREAS, the parties acknowledge that the development plan of IRI calls for the installation of a frontage road as hereinafter defined (the "Frontage Road") which will traverse the Johnson Easement, the IRI Resulting Parcel, the Bank Parcel and the Jenkins Easement respectively, said Frontage Road being twenty-seven feet (27') in width and the route of which is depicted on Exhibit "Z" attached hereto and incorporated by reference herein; and

WHEREAS, IRI, on this date, has acquired from Johnson a drainage easement over the property described on Exhibit "E" (the "Drainage Easement") and a slope easement on the property described on Exhibit "F" (the "Slope Easement"); and

WHEREAS, the parties are desirous of entering this Agreement with respect to the various matters set out herein.

NOW, THEREFORE, in consideration of the premises, the mutual

covenants contained herein and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

I. FRONTAGE ROAD.

(a) GRANT AND RESERVATION OF EASEMENTS:

(1) IRI hereby grants, bargains, sells and conveys to Bank (in Bank's capacity as owner of the Bank Parcel, and as Mortgagee of the IRI Resulting Parcel) its successors and assigns and to the Bank Parcel a non-exclusive, perpetual easement running with the Land for vehicular and pedestrian ingress and egress and for utilities over and across the route of the Frontage Road as the same traverses the IRI Resulting Parcel, the location of which shall is depicted on Exhibit "Z", and over and across the Johnson Easement and the Jenkins Easement as depicted on Exhibit "Z".

(2) Bank hereby grants, bargains, sells and conveys to IRI, its heirs, successors and assigns and to the IRI Resulting Parcel, a non-exclusive, perpetual easement running with the land for vehicular and pedestrian ingress and egress and for utilities over and across a portion of the route of the Frontage Road as the same traverses the Bank Parcel, the location of which is depicted on Exhibit "Z".

(3) IRI hereby grants, bargains, sells and conveys to Bank (in Bank's capacity as owner of the Bank Parcel and as mortgagee of the IRI Resulting Parcel), its successors and assigns on a non-exclusive, perpetual basis, running with the land, any necessary rights that the Bank requires in the Drainage Easement

and the Slope Easement.

(4) IRI agrees, as soon as practical hereafter and with due diligence and at its expense to legally describe (by metes and bounds) the Frontage Road, said description to be prepared by a licensed engineer in the state of Alabama and after such description is obtained, to record the same as appropriate as an amendment or correction to this Agreement with the Judge of Probate of Shelby County, Alabama.

(5) IRI hereby reserves unto itself and its heirs, successors and assigns, and to the Bank Parcel and the IRI Resulting Parcel, a perpetual easement running with the land for utilities, said easement being described as being all real property located between the north line of the Frontage Road and a line five feet (5') north of and parallel to the north line of the Frontage Road as shown on Exhibit "Z". Said easement is for the benefit of the Bank Parcel and the IRI Resulting Parcel and shall encumber both parcels.

(b) CONSTRUCTION: IRI agrees as soon as practical and with all due diligence and at its expense to construct the Frontage Road over the Johnson Easement, the IRI Resulting Parcel, the Bank Parcel and the Jenkins Easement in accordance with Exhibit "Z". Such Frontage Road shall be twenty-seven feet (27') BK to BK, shall include curbing, eight inch (8") base and a two-inch (2") binder coat of asphalt. IRI shall also install at its expense, a one-inch (1") seal coat of asphalt (the "Seal Coat") at the earlier of:

(1) The date a building is completed on the Bank Parcel;

or

(2) Twelve (12) months from the date of this Agreement.

(c) DEDICATION: If mutually agreed, the parties may dedicate the Frontage Road as a public road to the appropriate governmental authority in the future.

(d) MAINTENANCE PRIOR TO DEDICATION: Up until the time the Frontage Road has been accepted as a dedicated public road by the appropriate governmental authority, maintenance of the Frontage Road shall be conducted as follows:

(1) Up until the time the Seal Coat is installed, IRI shall be responsible for all maintenance of the Frontage Road except to the extent of any damage caused to the Frontage Road by construction activity on the Bank Parcel (such damage being the responsibility of Bank, its successors or assigns).

(2) From and after the installation of the Seal Coat, the cost of any necessary maintenance on the Frontage Road shall be borne as follows:

(A) Fifty percent (50%) by the owner of the Bank Parcel; and

(B) Fifty percent (50%) by the owner(s) of the IRI Resulting Parcel. (In the event there is more than one (1) owner of the IRI Resulting Parcel, this maintenance obligation shall be borne proportionately by the said owner(s) of the IRI Resulting Parcel according to the following formula: The denominator shall be the number of square feet in the IRI Resulting Parcel and the numerator shall be the number of square feet in any such owner(s)

parcel. The resulting fractions shall determine the percentage of responsibility with respect to the maintenance obligation of any such owner and shall be referred to herein as the IRI Owner's Percentage.) It is specifically intended that the route of the Frontage Road shall be properly repaired and maintained so as to provide a smooth, well drained driving surface similar to public roads.

(3) Notwithstanding the foregoing provisions of this paragraph I(d), it is expressly understood that if damage to the Frontage Road is occasioned by any particular owner(s) of any of the IRI Parcel, such damage which requires maintenance and repair, shall be borne by any such owner(s) causing such damage exclusively.

(4) If any owner(s) fail(s) to pay his/its proportionate share of any maintenance obligation with respect to the Frontage Road (the "Defaulting Owner(s)"), the owner(s) who have paid, or are ready, willing and able to pay, their proportionate share of any such maintenance expense (the "Non-Defaulting Owner(s) shall be entitled to require the Defaulting Owner(s) to submit to arbitration as hereinafter set out or if appropriate, bring suit in the appropriate Court in Shelby County, Alabama in order to compel such payment from such Defaulting Owner(s)"). The Non-Defaulting Owner(s) are specifically authorized to place a lis pendens for record with the Probate Office of Shelby County, Alabama against the Property of the Defaulting Owner(s) in conjunction with such arbitration or such suit. In the event the Non-Defaulting Owner(s)

are successful in such arbitration or such suit, in addition to the monetary amount of maintenance expense charged to such Defaulting Owner(s), the Non-Defaulting Owner shall be entitled to reasonable attorney's fees and expenses including expert witness fees in conjunction with any such arbitration and/or suit.

(e) INDEMNITY: The parties, for themselves, their heirs, successors and assigns, agree to indemnify and hold each other harmless from any and all liability from claims, demands, suits or causes of action hereafter presented as a result of the Frontage Road and the agreements made therewith and the easements granted herein and further agree, at their expense, to name as additional insured on each party's liability insurance policy any other fee owner(s) and mortgagee(s) of the IRI Resulting Parcel or the Bank Parcel or the Jenkins Easement or the Johnson Easement in amounts reasonably satisfactory to all such interested owner(s) and mortgagee(s).

II. CONDEMNATION.

(a) At the time the Condemnation is commenced, upon receipt by Bank of the notice of Condemnation and offer, the parties or their successors shall attempt to mutually agree as to whether or not such offer is acceptable. In the event such offer is not acceptable to Bank, in Bank's sole discretion, Bank, or its successors or assigns (in conjunction with IRI, its heirs, successor and assigns) shall proceed to defend any Condemnation action. All costs and expenses (the "Condemnation Costs") which Condemnation Costs shall include, but not be limited to, reasonable

attorney's fees and expert witness fees shall be borne by the owner of the Bank Parcel and by the owner(s) of the IRI Resulting Parcel (in the IRI Owner's Percentage) according to the Condemnation formula hereinafter set out.

(b) CONDEMNATION FORMULA: The formula, in order to determine:

(1) Allocation of Condemnation Costs; and

(2) Distribution of the final Condemnation award (the "Award") shall be as follows: An easterly to westerly line (the "Line") shall be established, the starting point of such Line being twenty feet (20') along the east property line of the Bank Parcel south of the northeast corner of the Bank Parcel. From such starting point, said Line shall proceed westwardly and parallel with the north line of the Bank Parcel to a point on the diagonal northwest line of the Bank Parcel. The number of square feet included within all real property within the Bank Parcel north of the Line shall be referred to herein as the Bank Numerator. The number of square feet included within all real property within the Bank Parcel which is south of the Line and north of the south line of the Condemned Property (the Condemned Property being defined as that amount of the Bank Parcel condemned by the Department for the widening of Alabama Highway 119) shall be referred to herein as the IRI Numerator. The total number of square feet of the Condemned Property shall be the denominator. The percentages resulting from dividing the Bank Numerator by the Denominator and dividing the IRI Numerator by the Denominator shall determine the Condemnation Costs

Allocation and the division of the Award as between the parties, their heirs, successors and assigns. In the event:

(A) The Condemned Property extends south of the north line of the Frontage Road; or

(B) The total square footage of the Condemned Property is less than the Bank Numerator (that is, the south line of the Condemned Property is north of the Line), Bank, its successors or assigns shall be entitled to all of the Award and shall bear all of the Condemnation Costs. Bank and the Bank Parcel shall not participate in any costs or awards associated with any Condemnation of the IRI Resulting Parcel except to the extent authorized by the Mortgage.

III. MISCELLANEOUS.

(a) ARBITRATION. All parties to this Agreement, and their successors and assigns, hereby agree that any controversy or claim between them arising out of or relating to the interpretation, performance or breach of any provision of this Agreement shall be settled exclusively by arbitration. Such arbitration shall be conducted in accordance with the commercial arbitration rules then in force of the American Arbitration Association before three (3) arbitrators appointed by the American Arbitration Association. The arbitration award shall be final and binding on all parties. Judgment upon such arbitration award may be entered in any court having jurisdiction.

(b) This Agreement shall be binding on the respective parties hereto, their heirs, successors and assigns.

(c) This Agreement shall be governed by the law of the State of Alabama.

(d) In the event any portion of this Agreement is declared to be illegal, such illegal portion shall be deemed to be removed from this Agreement and shall not disturb the balance of this Agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the date and year first above written.

UNION STATE BANK

By:
Its:

R. V. Affenich
Exec. V.V.

INTERSTATE RESTAURANT INVESTORS,
AN ALABAMA GENERAL PARTNERSHIP

By:
Its:

[Signature]
General Partner JOHN G. BLUNN

By:

Its: General Partner

By:

Its: General Partner

FRANK C. ELLIS, JR.

By:

His: Attorney-in-Fact

Frank C. Ellis, Jr.
[Signature]

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that REX V. ALEXANDER, whose name as 1262 V.P. of UNION STATE BANK, a state banking institution, 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/she, as such officer and with full authority, executed the same voluntarily for and as the act of said state banking institution on the day the same bears date.

Given under my hand and seal this 20 day of February, 1995.


Notary Public
My Commission Expires: 3-1-98

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that ~~JOHN MCCREYER~~, JOHN G. BENNER and ~~WILLIAM H. ROBERTSON~~, whose name as ~~all of the~~ General Partners of INTERSTATE RESTAURANT INVESTORS, AN ALABAMA GENERAL PARTNERSHIP, ~~is~~ ^{are} signed to the foregoing instrument, and who ~~he~~ known to me, acknowledged before me on this day that, being informed of the contents of said instrument, ~~they~~ ^{he}, as such General Partners and with full authority, executed the same voluntarily for and as the act of said general partnership on the day the same bears date.

Given under my hand and seal this 20 day of February, 1995.


Notary Public
My Commission Expires: 3-1-98

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, the undersigned authority, a Notary Public, in and for said County and in said State, hereby certify that JOHN C. BUNN, as Attorney-in-Fact for FRANK C. ELLIS, JR., is signed to the foregoing instrument, and who is known to me, acknowledged before me on this date, that, being informed of the contents of said instrument, he has executed the same voluntarily on the day the same bears date.

Given under my hand and seal this 20 day of February, 1995.


Notary Public
My Commission Expires: 3-1-98

AGREEMENT
EXHIBIT 'A' (1 R1 PARCEL)

A parcel of land located in the Southwest Quarter of Section 31, Township 19 South; Range 2 West and the Northwest Quarter of Section 6, Township 20 South, Range 2 West, Shelby County, Alabama; more particularly described as follows:

Commence at the Southeast corner of the Southwest Quarter of Section 31; thence run North along the Quarter line 506.79 feet; thence left $121^{\circ}25'36''$, 1325.96 feet; thence right $129^{\circ}39'13''$, 359.51 feet to the point of beginning; thence left $90^{\circ}00'$, 319.00 feet to the easterly right of way of U.S. Highway 31; thence right $90^{\circ}00'$, 271.39 feet northerly along said right of way; thence right $45^{\circ}59'33''$, 110.03 feet to the right of way of Alabama Highway No. 119; thence an interior angle left of $140^{\circ}45'20''$ to the chord of a curve to the left with a radius of 1949.89 feet and a central angle of $7^{\circ}04'37''$; thence run along the arc of said curve 240.84 feet along the Highway 119 right of way; thence an interior angle left from said chord of $85^{\circ}14'14''$, 367.82 feet to the point of beginning.

Johnson. entire parcel

AGREEMENT
EXHIBIT B
JOHNSON EASEMENT

MUTUAL INGRESS - EGRESS UTILITY EASEMENT

The following is a description of an Ingress - Egress Utility Easement in perpetuity and being more particularly described as follows:

Commence at the Southeast corner of the Southwest Quarter of Section 31, Township 19 South, Range 2 West; thence run north along the Quarter line 506.79 feet; thence left $121^{\circ}25'36''$ run in a southwesterly direction 1325.96 feet; thence right $129^{\circ}39'13''$ run in a northerly direction 359.51 feet; thence continue on last stated course 297.82 feet to the point of beginning; thence right $90^{\circ}00'00''$ run in an easterly direction 30.00 feet; thence left $90^{\circ}00'00''$ run in a northerly direction 74.63 feet to a point on the south right-of-way of Alabama Highway No. 119, said point being on a curve to the right said curve having a central angle of $01^{\circ}46'55''$ and a radius of 1949.89 feet, turn left $99^{\circ}11'45''$ to tangent and run along the arc of said curve and said right-of-way in a westerly direction 60.08 feet; thence left $82^{\circ}35'10''$ to tangent and leaving said right-of-way run in a southerly direction 65.87 feet; thence left $90^{\circ}00'00''$ run in an easterly direction 30.0 feet to the point of beginning.

Johnson - ACCESS Easement

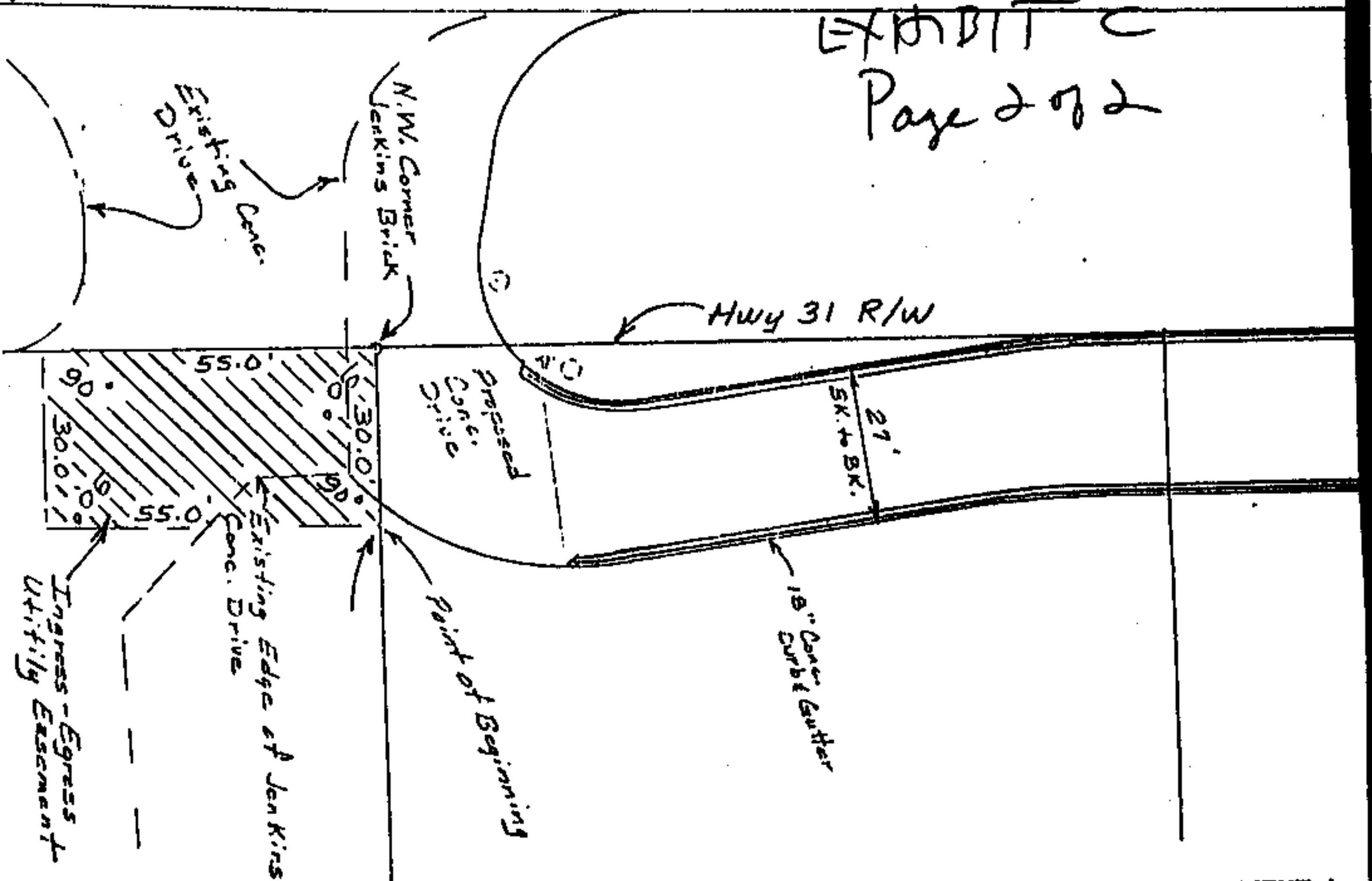
AGREEMENT
EXHIBIT C
JENKINS EASEMENT

Page 1 of 2

LEGAL DESCRIPTION FOR INGRESS - EGRESS UTILITY EASEMENT

Commence at the Southeast corner of the Southwest Quarter of Section 31, Township 19 South, Range 2 West, Shelby County, Alabama; thence run North along the Quarter line 506.79 feet; thence left $121^{\circ}25'36''$, 1325.96 feet; thence right $129^{\circ}39'13''$, 359.51 feet; thence left $90^{\circ}00'$, 289.00 to the point of beginning of said easement; thence continue on last stated course 30 feet to the Easterly Right-of-Way of U.S. Highway 31 and to the Northwest corner of the property conveyed to Jenkin's Brick; thence left $90^{\circ}00'$, 55.0 feet Southerly along said R.O.W.; thence $90^{\circ}00'00''$ left and leaving said Right-of-Way run Easterly 30.0 feet; thence $90^{\circ}00'00''$ left 55.0 feet to the point of beginning.

Legal & Map
for Easement
across Jenkin's



LEGAL DESCRIPTION FOR INGRESS - EGRESS UTILITY EASEMENT

Commence at the Southeast corner of the Southwest Quarter of Section 31 Township 19 South, Range 2 West, Shelby County, Alabama; thence run North along the Quarter line 506.79 feet; thence left $121^{\circ}25'36''$, 1325.96 feet; thence right $129^{\circ}39'13''$, 359.51 feet; thence left $90^{\circ}00'$, 289.00 to the point of beginning of said easement; thence continue on last stated course 30 feet to the Easterly Right-of-Way of U.S. Highway 31 and to the Northwest corner of the property conveyed to Jenkin's Brick; thence left $90^{\circ}00'$, 55.0 feet Southerly along said R.O.W. thence $90^{\circ}00'00''$ left and leaving said Right-of-Way run Easterly 30.0 feet; thence $90^{\circ}00'00''$ left 55.0 feet to the point of beginning;

Jenkin's Brick Property

289.0'

Johnson Property

Scale: 1"=30'

N.E. Corner of Jenkin's Brick

AGREEMENT
EXHIBIT 'D'
BANK PARCEL
LEGAL DESCRIPTION

A parcel of land situated in the Southwest Quarter of Section 31, Township 19 South, Range 2 West, Shelby County, Alabama and being more particularly described as follows:

Commence at the Southeast corner of the Southwest Quarter of Section 31, Township 19 South, Range 2 West; thence run north along the Quarter line 506.79 feet; thence left $121^{\circ}25'36''$ run in a southwesterly direction 1325.96 feet; thence right $129^{\circ}39'13''$ run in a northerly direction 359.51 feet; thence left $90^{\circ}00'00''$ run in a westerly direction 319.00 feet, to the Easterly right-of-way of U.S. Highway No. 31; thence right $90^{\circ}00'00''$ run in a northerly direction along said right-of-way 131.39 feet to the point of beginning; thence continue along last stated course 140.00 feet; thence right $45^{\circ}59'33''$ run in a northeasterly direction along said right-of-way 110.03 feet to the right-of-way of Alabama Highway No. 119 which is on a curve to the left, said curve having a central angle of $02^{\circ}49'12''$ and a radius of 1949.89 feet, thence turn an angle to tangent to the right of $42^{\circ}47'00''$ run along the arc of said curve 95.97 feet in an easterly direction along the right-of-way of Alabama Highway No. 119; thence turn an angle to tangent to the right of $94^{\circ}02'39''$ and leaving said right-of-way run in a southerly direction 220.85 feet; thence right $90^{\circ}00'00''$ run in a westerly direction 175.00 feet to the point of beginning and containing 34,973.68 square feet more or less.

USB BANK PARCEL

AGREEMENT
EXHIBIT 'E'
DRAINAGE EASEMENT

Storm Water Easement from the Johnson Estate
to I.R.I.

The following is a legal description of a blanket
storm water easement on the property as described:

A parcel of land containing 4.71 Acres, more or less, located in the SW Quarter of Section 31, Township 19 South, Range 3 West and the NW Quarter of Section 6, Township 20 South, Range 3 West, Shelby County, Alabama, more particularly described as follows:

Commence at the Southeast corner of the Southwest Quarter of said Section 31; thence run Northerly along the Quarter line 506.80 feet; thence left $121^{\circ}25'36''$ Southwesterly, 816.37 feet to the Point of Beginning; thence continue along the same course Southwesterly 509.59 feet; thence right $129^{\circ}39'13''$, 727.32 feet to the Southerly Right-of-Way of Alabama Highway No. 119; thence right $77^{\circ}47'41''$ to the chord of a curve to the left with a central angle of $7^{\circ}49'07''$, a radius of 1949.89 feet and a chord length of 265.88; thence run along said R.O.W. and the arc of said curve 266.09 feet; thence an interior angle left of $93^{\circ}55'$ from said chord, 477.12 feet to the Point of Beginning.

AG RUMONT
EXHIBIT 'F'

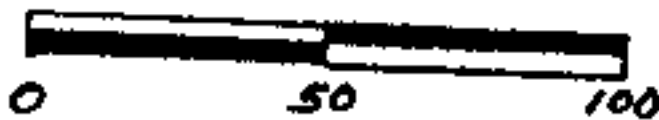
SLOPE EASEMENT

The following is a description of a slope easement which shall automatically cease upon the filling of adjoining property:

Commence at the Southeast corner of the Southwest Quarter of Section 31, Township 19 South, Range 2 West; thence run north along the Quarter line 506.79 feet; thence left $121^{\circ}25'36''$ run in a southwesterly direction 1325.96 feet; thence right $129^{\circ}39'13''$ run in a northerly direction 359.51 feet to the point of beginning; thence right $90^{\circ}00'00''$ run in a easterly direction 15.0 feet; thence left $90^{\circ}00'00''$ run in a northerly direction 297.82 feet; thence left $90^{\circ}00'00''$ run in a westerly direction 15.0 feet; thence left $90^{\circ}00'00''$ run in a southerly direction 297.82 feet to the point of beginning.

Z

N



02/21/1995-04564
03:55 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
020 MCD 59.00