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Inst # 1996-17664

**DECLARATION OF PROTECTIVE COVENANTS
OF
HUNTER AND ASSOCIATES ADDITION TO RIVERCHASE**

Inst # 1996-17664

06/03/1996-17664
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SHELBY COUNTY JUDGE OF PROBATE
018 MCD 52.00

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STATE OF ALABAMA

COUNTY OF SHELBY

**DECLARATION OF PROTECTIVE COVENANTS
OF
HUNTER AND ASSOCIATES ADDITION TO RIVERCHASE**

KNOW ALL MEN BY THESE PRESENTS, That:

WHEREAS, Hunter & Associates, Inc., an Alabama corporation (herein the "Developer"), is the owner of the real property described on **Exhibit A** attached hereto and made a part hereof (the "Property") which is to be subdivided into lots and sold for commercial use; and

WHEREAS, Parkway Partners presently holds a mortgage on the Property and has agreed to such subdivision of the Property.

NOW, THEREFORE, Developer does hereby proclaim, publish and declare that any part of the Property which becomes subject to these Restrictions shall be held, conveyed, hypothecated or encumbered, rented, used, occupied and improved subject to this Declaration, which shall run with the land and shall be binding upon Developer and Parkway Partners and upon all parties having or acquiring any right, title or interest in any part of the Property which is subject to this Declaration. **THE RESTRICTIONS CONTAINED HEREIN SHALL NOT APPLY TO OR AFFECT ANY PROPERTY WHICH IS NOT SUBJECTED SPECIFICALLY BY WRITTEN INSTRUMENT TO THIS DECLARATION.**

ARTICLE I

MUTUALITY OF BENEFIT AND OBLIGATION

The Restrictions set forth herein are made for the mutual and reciprocal benefit of each and every part of the Property and are intended to create mutual, equitable servitudes upon each such part of the Property and in favor of each and all such parts of the Property therein, to create reciprocal rights between the respective owners and future owners of such Property; and to create a privity of contract and estate between the grantees of said Property, their heirs, successors and assigns. All of the Property shall be held, transferred, sold, conveyed, used, leased, occupied,

mortgaged or otherwise encumbered subject to all the terms and provisions of this Declaration, including, but not limited to, the lien provisions set forth in Article VI.

ARTICLE II

DEFINITIONS

SECTION 2.1 Association. The Hunter's Addition to Riverchase Association, Inc., its successors and assigns.

2.2 Association Land. Such real property (including any road within the Property) conveyed to the Association, and all improvements located thereon, for so long as the Association or successor thereof may be the owner thereof.

2.3 Board. The Board of Directors of the Association.

2.4 Charter. The Articles of Incorporation of the Association.

2.5 Declaration. This Declaration of Protective Covenants of Hunter's Addition to Riverchase which shall be recorded in the Probate Records of Shelby County, Alabama, as the same may from time to time be supplemented or amended in the manner described therein.

2.6 Deed. Any deed, assignment, lease, or other instrument conveying fee title or a leasehold interest in any part of the Property subjected to these Restrictions.

2.7 Lot. Each separate parcel of real property or subdivided lot located within the Property provided, that in either case, the same consists of in excess of .25 acre.

2.8 Member. A person or other entity who is a record owner of a Lot.

2.9 Member's Property. All Lots in the Property.

2.10 Owner. The owner of a Lot.

2.11 Property. All of the real property described on Exhibit "A", together with any additional property submitted to this Declaration as provided herein.

2.12 Occupant. Any person or persons occupying or leasing Member's Property.

2.13 Restrictions. The covenants, agreements, easements, charges and liens created or imposed by this Declaration.

ARTICLE III

CONSTRUE WITH RIVERCHASE COVENANTS

This Declaration shall be read, construed and interpreted in a manner consistent with the Declaration of Protective Covenants, Agreements, Easements, Charges and Liens for Riverchase (Business), as recorded in Misc. Book 13, Page 50, and amended in Misc. Book 15, Page 189, and further amended in Misc Book 19, Page 633, all in the Probate Records of Shelby County, Alabama (said covenants, as amended, being referred to herein as the "Riverchase Covenants"). The Riverchase Covenants shall remain fully applicable to the Property as set forth therein. Owners of lots in the Property shall be members of both the Riverchase Business Association, Inc., as described in the Riverchase Covenants, and the Hunter's Addition to Riverchase Association, Inc., described herein. Lots within the Property shall be subject to the charges and liens described in both the Riverchase Covenants and in this Declaration. In the event of a conflict between the Riverchase Covenants and the provisions of this Declaration, the terms of the Riverchase Covenants shall control.

ARTICLE IV

EASEMENT FOR ROADSIDE MAINTENANCE

In order to provide for a neat and orderly appearance of any road within the Property, the Association shall have the right, through its agents, employees and contractors to enter upon the Lots and, within a ten foot (10') wide strip bordering any road, to cut grass and weeds, rake leaves, and perform such other level or degree of roadside maintenance as shall be determined by the Association. The amount of roadside maintenance services to be provided by the Association, if any, shall be determined by the Board of the Association; provided that this Article IV shall not be construed as imposing any obligation on the Association to perform such services. The cost of any such roadside maintenance shall be an expense of the Association, and shall be covered by the Annual Charges set forth in Article V hereof. No Member shall be entitled to any reduction of or credit on such Annual Charges due to the Member or other person performing roadside maintenance himself instead of having the roadside maintenance performed by the Association.

ARTICLE V

ASSESSMENT OF ANNUAL CHARGE

SECTION 5.1 Assessment. For the purpose of providing funds for use as specified in Article VII hereof, the Association shall in each year, commencing with the year 1997, assess against each Lot, with respect to which over six months have elapsed since the original sale of such Lot by the Developer, a charge (which shall be uniform with respect to all Lots) equal to a specified number of dollars per Lot. Each such Lot shall be charged with and subject to a lien for the amount of such separate assessment which shall be deemed the "Annual Charge" with respect to such Lot.

5.2 Date of Commencement of Annual Charge. As soon as may be practical in each year, the Association shall send a written bill to each Member stating the amount of the Annual Charge assessed against each such Lot. At the option of the Association, the Annual Charge may be billed in one installment, or may be billed in quarterly or monthly installments. Any installment not paid within thirty (30) days following the date of receipt of the bill shall be deemed delinquent and will bear interest at the rate of twelve percent (12%) per annum until paid.

5.3 Effect of Nonpayment of Assessments; Remedies of Association. If the Member shall fail to pay any installment of the Annual Charge within thirty (30) days following receipt of the bill referred to in Section 5.2 hereof, and within thirty (30) days after additional written notice that the Member is delinquent in his payment, in addition to the right to sue the Member for a personal judgment, the Association shall have the right to enforce the lien hereinafter imposed to the same extent, including a foreclosure sale and deficiency decree, and subject to the same procedures, as in the case of mortgages under applicable law, and the amount due by such Member shall include the Annual Charge, as well as the cost of such proceedings, including a reasonable attorney's fee, and the aforesaid interest. In addition, the Association shall have the right to sell the property at public or private sale after giving notice to the Member (by registered mail or by publication in a newspaper of general circulation in Shelby County at least once a week for three successive weeks) prior to such sale.

5.4 Certificate of Payment. Upon written demand by a Member, the Association shall within a reasonable period of time issue and furnish to such Member a written certificate stating that all Annual Charges (including interest and costs, if any) have been paid with respect to any specified Lot as of the date of such

certificate, or if all Annual Charges have not been paid, setting forth the amount of such Annual Charges (including interest and costs, if any) due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificates which must be paid at the time that the request for such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and any *bona fide* purchaser of, or lender on, the Lot in question.

ARTICLE VI

IMPOSITION OF CHARGE AND LIEN UPON PROPERTY

SECTION 6.1 Creation of Lien for Assessments. All Lots shall be subject to a continuing lien for assessments levied by the Association in accordance with the provisions of this Declaration. The Annual Charge together with interest thereon and the costs of collection thereof including reasonable attorney's fees as herein provided, shall be a charge on and shall be a continuing lien upon the Lot against which each such assessment or charge is made.

6.2 Personal Obligation of Members. Each Member, by acceptance of a deed or other conveyance to a Lot, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay the Association the Annual Charges.

6.3 Subordination of Lien to Mortgages. The lien of any assessment or charge authorized herein with respect to any Lot is hereby made subordinate to the lien of any *bona fide* mortgage on such Lot if, but only if, all assessments and charges levied against such Lot falling due on or prior to the date such mortgage is recorded have been paid. The sale or transfer of any Lot pursuant to a mortgage foreclosure proceeding or a proceeding in lieu of foreclosure or the sale or transfer of such Lot pursuant to a sale under power contained in a mortgage on such property shall extinguish the lien for assessments falling due prior to the date of such sale, transfer or foreclosure, but the Association shall have a lien on the proceeds of such sale senior to the equity or right of redemption of the mortgagor. The foregoing subordination shall not relieve a Member whose Lot has been mortgaged of his personal obligation to pay all assessments and charges falling due during the time when he is the owner of such property. The Association may at any time, either before or after the mortgaging of any Lot, waive, relinquish or quitclaim in whole or in part the right of the Association to assessments and other charges collectible by the Association with

respect to such property coming due during the period while such property is or may be held by a mortgagee or mortgagees pursuant to such sale or transfer.

ARTICLE VII

USE OF FUNDS

SECTION 7.1 Use of Funds. The Association shall apply all funds received by it pursuant to these Restrictions, and from any other source, reasonably for the benefit of property owned by the Association and by Association Members and specifically to the following uses, unless other uses are approved by 51% of the votes of Members of the Association, and with the understanding that, at the Association's discretion, funds shall be applied to operations and maintenance before being applied to capital improvements: (i) repayment of principal and interest of any loans of the Association; (ii) the costs and expenses of the Association for the benefit of the Property, Owners and Occupants by devoting the same to the acquisition, construction, reconstruction, conduct, alteration, enlargement, laying, renewal, replacement, repair, maintenance, operation and subsidizing of such of the following as the Board, in its discretion, may from time to time establish or provide: any or all projects, services, facilities, studies, programs, systems and properties relating to: any road within Hunter & Associates Addition to Riverchase when owned by the Association, including, but not limited to the maintenance, repair and replacement of the road; street lights, curbing, gutters, sidewalks and landscaping; directional and informational signs; subdivision entrance features, walls and signs; and contracts, equipment and labor for general maintenance and clean-up.

7.2 Obligations of Association with Respect to Funds. The Association shall not be obligated to spend in any calendar year all the sums collected in such year by way of Annual Charges or otherwise, and may carry forward as surplus any balances remaining; nor shall the Association be obligated to apply any such surpluses to the reduction of the amount of the Annual Charge in the succeeding year, but may carry forward from year to year such surplus as the Board in its absolute discretion may determine to be desirable for the greater financial security of Association and the effectuation of its purposes. The Association does not assure that the services described in Section 7.1 will be provided and nothing herein shall obligate the Association or its Directors to undertake to provide such services. The Association shall provide to all Members of the Association an annual

accounting of funds expended and balances remaining within one hundred twenty (120) days after the end of any calendar year, such accounting to be at the Association's expense.

7.3 Authority of Association to Contract. The Association shall be entitled to contract, subject to the last sentence of Section 7.4, with any corporation, firm or other entity for the performance of the various undertakings of the Association specified in Section 7.1, and such other undertakings as may be approved by 51% of the votes of the Members of the Association, and the performance by any such entity shall be deemed the performance of the Association hereunder.

7.4 Authority of Association to Borrow Money. The Association shall be entitled to borrow money for the uses specified in Section 7.1, or other uses if approved by 51% of the votes of the Members of the Association, up to an outstanding principal balance of \$25,000. Any borrowing over such amount shall require the approval of 51% of the votes of the Members of the Association. Further, the Association shall not incur outstanding contractual and debt obligations exceeding an aggregate of \$40,000 at any given point in time (not including any prospective or actual liability arising out of a lawsuit not based on unpaid accounts), without the approval of 51% of the votes of the Members of the Association.

7.5 Authority of Association to make Capital Expenditures. The Association shall be entitled to make capital expenditures for the uses specified in Section 7.1 or other uses as may be approved as provided therein, up to an amount not to exceed \$25,000.00, as limited by the last sentence in Section 7.4. Any capital expenditure in excess of \$25,000.00 shall require the approval of 51% of the Members of the Association.

7.6 CPI Adjustments. The dollar limitations in Sections 7.4 and 7.5 shall be increased effective January of each year (the "Adjustment Year"), beginning January, 1998, to reflect the percentage increase in the Revised Consumer Price Index -- All Items and Major Group Figures for Urban Wage Earners and Clerical Workers (1967 = 100) (herein the "CPI") from the CPI for September, 1996 to the CPI for September of the year prior to the respective Adjustment Year.

ARTICLE VIII

RIGHTS OF ENJOYMENT IN ASSOCIATION LAND

SECTION 8.1 Association Land. Developer shall convey or cause to be conveyed to the Association, subsequent to the recordation of this Declaration, one or more tracts of land within the Property for location of one or more roads. The conveyance may restrict the uses of the property being conveyed.

8.2 Easement of Use. Every Owner, by reason of such ownership, shall have a right and easement of use in and to Association Land, and such easement shall be appurtenant to and shall pass with every Lot upon transfer. All Occupants who are not Members shall have a non-transferable privilege to use Association Land for as long as they are Occupants within the defined meaning of that term. All such rights, easements, and privileges, however, shall be subject to the right of the Association to adopt and promulgate reasonable rules and regulations pertaining to the use of Association Land which shall enhance the preservation of such facilities, the safety and convenience of the users thereof, or which, in the discretion of the Association, shall serve to promote the best interests of the Owners and Occupants. The use of the Association Land, including any road within the Property, shall be restricted to Members and Occupants, and their respective invitees and licensees.

8.3 Suspension of Rights. The Association shall have the right to suspend the right of any Member (and the privilege of each Occupant claiming through such Member) to use Association Land and to receive services from the Association for any period during which the Annual Charge assessed under Article V hereof remains overdue and unpaid, or in connection with the enforcement of any rules or regulations relating to such facilities in accordance with the provisions of this Article VIII.

ARTICLE IX

MEMBERSHIP AND VOTING RIGHTS

SECTION 9.1 General. The structure of the Association is contained in its Charter and by-laws. The matters discussed in Sections 9.2 to 9.5 are summaries of some of the provisions of the Charter of the Association. The Charter and by-laws of the Association cover each of these matters, in addition to others, in greater detail, and should be consulted for a full explanation of the rights and obligations appurtenant to membership in the Association.

9.2 All Lot Owner's Are Members of Association. Every owner of a Lot constituting Member's Property shall, by virtue of such ownership, be a Member of the Association. Membership shall be appurtenant to, and may not be separated from the ownership of any property which is Member's Property.

9.3 Voting Rights; Members. Each Member shall have one vote for each Lot owned by such Member, provided, however, that so long as Developer shall own a Lot, Developer shall have, with respect to all matters requiring the vote of the Members, two votes for the first Lot owned and one additional vote for each additional Lot owned.

9.4 Conflict. In the event of a conflict between the terms of this Declaration and the Charter of the Association, the terms of the Charter shall control.

ARTICLE X

SUBMISSION OF ADDITIONAL REAL PROPERTY

Developer or the Association may at any time during the pendency of this Declaration add any additional real property to the Property which is covered by this Declaration. Additional real property may be submitted to the provisions of this Declaration by an instrument executed by (i) Developer, its successors or assigns or the Association and the (ii) owner of such additional real property in the manner required for the execution of deeds. Such instrument shall: (i) refer to this Declaration stating the book or books of the records of Shelby County, Alabama, and the page numbers where this Declaration is recorded; (ii) contain a statement that such additional real property is subjected to the provisions of this Declaration; (iii) contain an exact description of such additional real property; and (iv) such other or different covenants, conditions and restrictions as Developer or the Association shall, in its discretion, specify to regulate and control the use, occupancy and improvement of such additional real property.

Upon the recording of such instrument in the appropriate Probate Office of Shelby County, Alabama, such additional real property shall be deemed part of the Property and the owner or owners of any Lots on said additional real property shall thereupon be members of the Association.

ARTICLE XI

GENERAL

SECTION 11.1 Grantee's Acceptance. The grantee of any Lot subject to the coverage of these Restrictions, by acceptance of the deed or other instrument conveying an interest in or title to, or the execution of a contract for the purchase thereof, shall accept such deed or other contract upon and subject to each and all of these Restrictions herein contained.

11.22 Indemnity For Damages. Each and every Lot Owner and future Lot Owner, in accepting a deed or contract for any Lot subject to these Restrictions, agrees to indemnify the Association for any damage caused by such Owner, or the contractor, agent, or employees of such Owner, to roads, streets, gutters, or walkways, including all surfacing thereon, or to water, drainage or storm sewer lines or sanitary sewer lines, or to street lights or other improvements, owned by the Association, or for which the Association has responsibility, at the time of such damage.

11.3 Severability. Every one of the provisions and restrictions is hereby declared to be independent of, and severable from the rest of the provisions and restrictions and of and from every other one of the provisions and restrictions and of and from every combination of the provisions and restriction in this Declaration shall in no way affect any of the other provisions or restrictions which shall remain in full force and effect.

11.4 Captions. The captions preceding the various sections, paragraphs and subparagraphs of these Restrictions are for convenience of reference only, and none of them shall be used as an aid to the construction of any provision of the restrictions. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

11.5 Effect of Violation on Mortgage Lien. No violation of any of these Restrictions shall defeat or render invalid the lien of any mortgage made in good faith and for value upon any portion of the Property; provided, however, that any mortgagee in actual possession, or any purchaser at any mortgagees' or foreclosure sale shall be bound by and subject to these Restrictions as fully as any other Owner of any portion of the Property.

11.6 No Reverter. No Restriction herein is intended to be, or shall be construed as, a condition subsequent or as creating a possibility of reverter.

11.7 Duration and Amendment. The Restrictions contained in this Declaration shall run with and bind the Property, shall inure to the benefit of and shall be enforceable by the Association and the Owner of any Lot or other parcel included in the Property, their respective legal representatives, heirs, successors and assigns until the 31st day of December in the year 2021, after which time said Restrictions shall be automatically extended for successive periods of ten years. This Declaration may not be amended in any respect except by the execution of an instrument signed by (i) not less than 80% of the Lot Owners or (ii) Developer, which instrument shall be filed for recording among the Land Records of Shelby County, Alabama, or in such other place of recording as may be appropriate at the time of the execution of such instrument.

11.8 Enforcement. In the event of a violation or breach of any of these Restrictions or any amendments thereto by any Lot Owner, or employee, agent, or lessee of such Owner, or by any Occupant, then the Owner(s) of Lot(s), the Association, or the Developer, their heirs, successors and assigns, or any party to whose benefit these Restrictions inure shall have the right to proceed at law or in equity to compel compliance with the terms and conditions hereof, to prevent the violation or breach of said Restrictions, to sue for and recover damages or other dues, or take all such courses of action at the same time, or such other legal remedy it may deem appropriate. No delay or failure on the part of an aggrieved party to initiate an available remedy set forth herein shall be held to be a waiver of that party or an estoppel of that party or of any other party to assert any right available to him upon the recurrence or continuation of said violation or the occurrence of a different violation.

Damages shall not be deemed adequate compensation for any breach or violation of any provision hereof, but any person or entity entitled to enforce any provision hereof shall be entitled specifically to relief by way of injunction as well as any other available relief either at law or in equity.

Any party to a proceeding who succeeds in enforcing a Restriction or enjoining the violation of a Restriction against an Owner may be awarded a reasonable attorney's fee against such Owner.

11.9 Certificate of Violation. In addition to any other rights or remedies available to the Association hereunder or at law or equity, the Association shall have the right to file in the Records of Shelby County, Alabama, a Certificate or Notice of Violation of these Restrictions (which violation shall include, without limitation, nonpayment of the Annual Charges and/or failure to comply with architectural guidelines) upon failure of a Lot

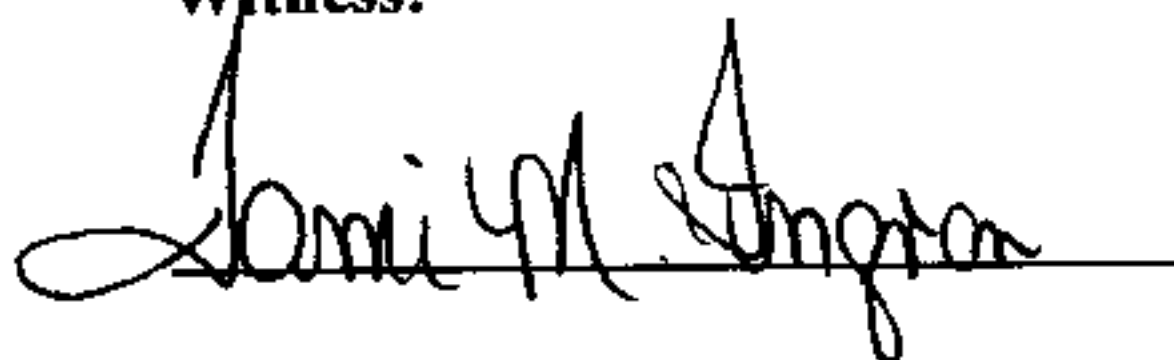
Owner to correct a violation of these Restrictions within thirty (30) days after written notice of the violation has been given by the Association to the Lot Owner.

11.10 Interpretation by Association. The Association shall have the right to construe and interpret the provisions of this Declaration, and in absence of an adjudication by a court of competent jurisdiction to the contrary, its construction or interpretation shall be final and binding as to all persons or property benefited or bound by the provisions hereof.

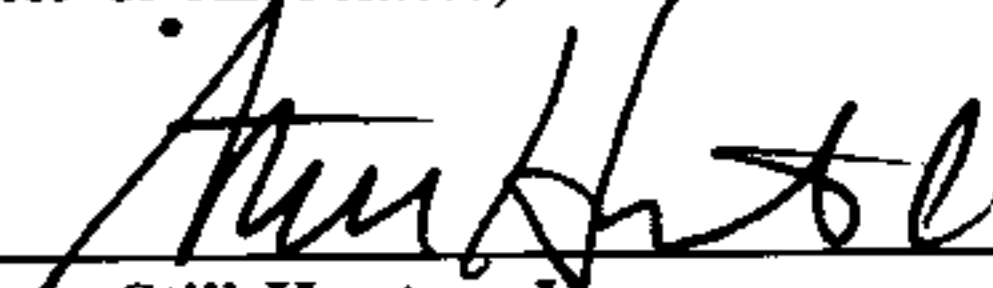
11.11 No Waiver. The failure of any party entitled to enforce any of these Restrictions herein contained shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to such a violation or breach occurring prior or subsequent thereto; provided, however, that approval of plans pursuant to Article III shall be binding on any and all parties as a conclusive determination that such plans are in conformity with these Restrictions.

IN WITNESS WHEREOF, this Declaration of Protective Covenants of Hunter and Associates Addition to Riverchase has been executed by Hunter and Associates, Inc., effective the ____ day of May, 1996.

Witness:

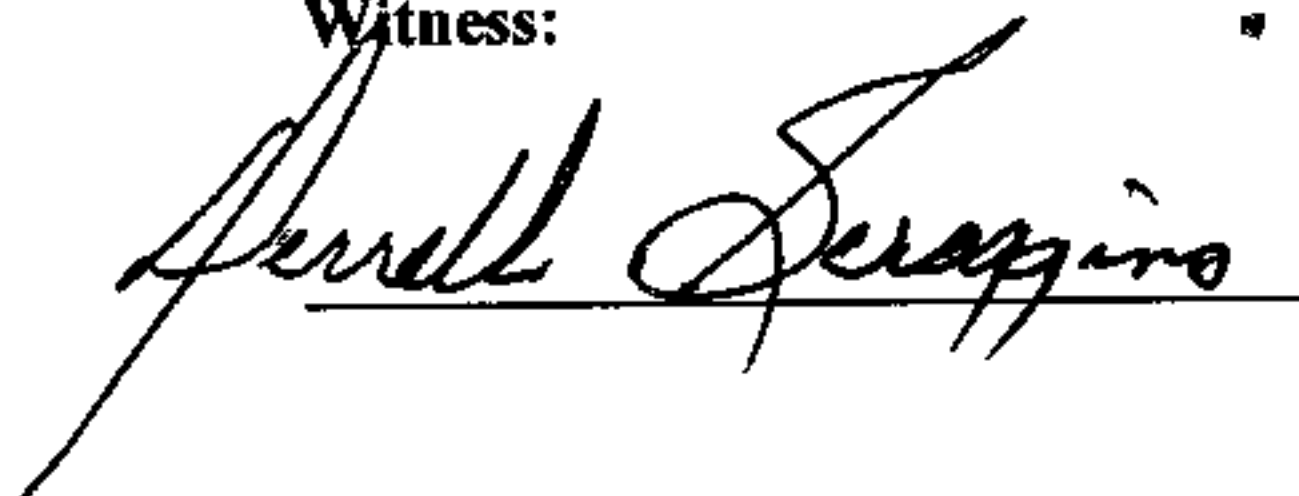


Hunter & Associates, Inc.

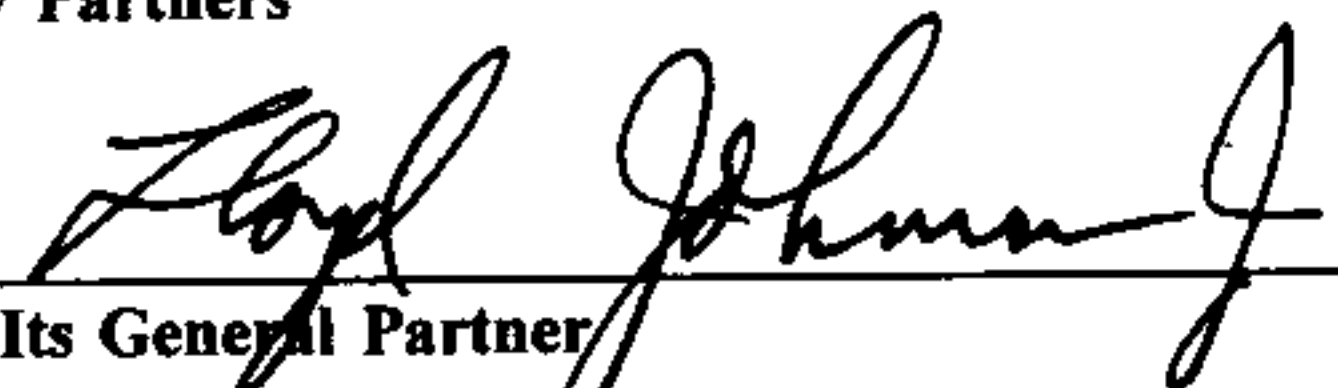
By: 
Still Hunter, Jr.
Its President

Parkway Partners, as Mortgagee of the Property, hereby joins in the execution of this instrument in order to evidence its consent to the terms and conditions hereof and its agreement that, upon any foreclosure or acceptance of a deed in lieu thereof, the transferee shall take title to the property transferred thereby subject to the terms and conditions set forth herein.

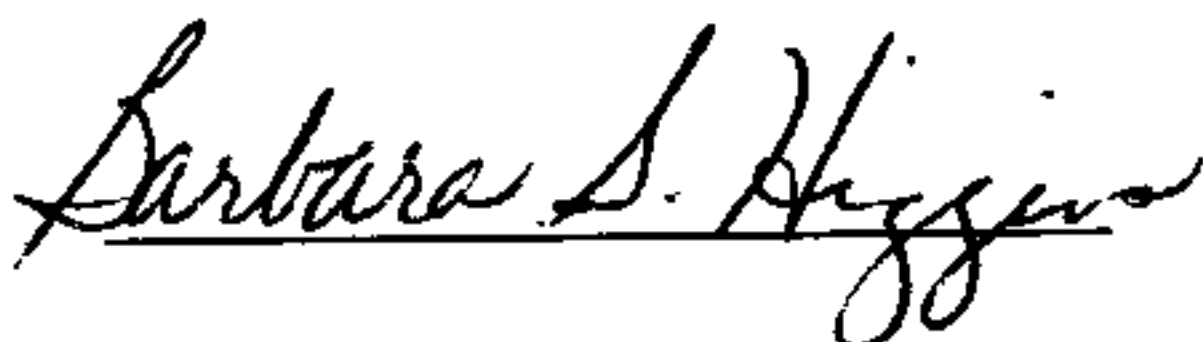
Witness:



Parkway Partners

By: 
Its General Partner

Witness:



By: 
Its General Partner

STATE OF ALABAMA

COUNTY OF ~~SHELBY~~ Jefferson

I, Easter J. Singleton, a notary public in and for said county in said state, hereby certify that Still Hunter, Jr., whose name as President of Hunter & Associates, 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 such instrument, 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 29 day of May, 1996.

Easter J. Singleton
Notary Public

[Notarial Seal]

My Commission Expires: 10/19/99

STATE OF ALABAMA

COUNTY OF ~~SHELBY~~ Lauderdale

I, JUDITH CABLER, a notary public in and for said county in said state, hereby certify that Lloyd JOHNSON, Jr., whose name as General Partner of Parkway Partners, an Alabama general partnership, 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 such instrument, he, as such general 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 25th day of May, 1996.

Judith Cabler
Notary Public

[Notarial Seal]

My Commission Expires: 7/28/97

STATE OF ALABAMA

COUNTY OF ~~SHELBY~~ WALKER

I, William K. Higgins Jr., a notary public in and for said county in said state, hereby certify that W. F. Cobb III, whose name as General Partner of Parkway Partners, an Alabama general partnership, 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 such instrument, he, as such general 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 29th day of May, 1996.

William K. Higgins Jr.
Notary Public

[Notarial Seal]

My Commission Expires: 7/18/98

THIS INSTRUMENT PREPARED BY:

Felton W. Smith
Balch & Bingham
Post Office Box 306
Birmingham, Alabama 35201

Inst # 1996-17664

Hunter and Associates Addition to Riverchase

06/03/1996-17664
08:34 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
018 MCD 52.00

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