

## EASEMENT AGREEMENT

This Easement Agreement ("Agreement") is made this 6<sup>th</sup> day of December, 1997 by and between **McWHORTER PROPERTIES -- HOOVER, L.L.C.**, an Alabama limited liability corporation ("McWhorter") and **SOUTHLAKE PROPERTIES**, an Alabama general partnership ("Southlake").

### WITNESSETH

**WHEREAS**, McWhorter is the owner of certain real property in Shelby County, Alabama, more particularly described on Exhibit "A" attached hereto and made a part hereof ("McWhorter Property"); and

**WHEREAS**, Southlake is the owner of certain real property in Shelby County, Alabama which is adjacent to the McWhorter Property (the "Southlake Property"), more particularly described on Exhibit "B" attached hereto and made a part hereof ("Easement Area"); and

**WHEREAS**, in connection with the development of the McWhorter Property, McWhorter desires that Southlake grant McWhorter a temporary construction easement on, over, upon and across the Easement Area for the purposes described below.

**WHEREAS**, in connection with the development of the McWhorter Property, McWhorter desires that Southlake grant McWhorter a nonexclusive perpetual slope easement on, over, upon and across Property owned by Southlake, more particularly described on Exhibit "C" attached hereto and made a part hereof ("Slope Easement Area").

**NOW, THEREFORE**, for and in consideration of the foregoing recitals, together with Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, McWhorter and Southlake hereby agree as follows:

1. **Temporary Construction Easement**. Southlake hereby grants to McWhorter, its contractors, employees or other agents, an easement on, over, upon and across the Easement Area for the following purposes (the "Temporary Construction Easement"):

- (i) To tie slopes; to intercept off-site drainage; to remove the remainder of Southlake Circle and install the curb on Southlake Parkway ("Easement Purpose");
- (ii) Temporary ingress, egress, and access for construction vehicles, equipment and materials reasonably necessary to fulfill the Easement Purpose;

- (iii) Temporary overnight storage on the Easement Area of construction vehicles, equipment and materials used during the course of the construction of the Easement Purpose;

2. **Slope Easement.** Southlake hereby grants to McWhorter, its contractors, employees or other agents a nonexclusive perpetual slope easement on, over, upon and across the Slope Easement Area to build, grade and maintain a slope in order to, among other things, permit McWhorter to conform the elevations and grades located on the McWhorter Property and Slope Easement Area consistent with the Plans of Columbia Engineering dated December 5, 1997. McWhorter shall place grass, vegetation and pine trees in the Slope Easement Area consistent with sound engineering practices and shall maintain the Slope Easement Area at all times in good condition. Southlake shall not use the Slope Easement Area in a manner which would have any adverse impact on the McWhorter Property without the consent of McWhorter.

McWhorter agrees to perform the above-described activities in accordance with the terms of this Agreement at McWhorter's sole cost and expense.

Southlake acknowledges that McWhorter is merely installing the "dead end" sign, guardrail and barricade and that McWhorter has no obligation to maintain these items once they have been constructed and installed on the Easement Area.

3. **Commencement.** The Easement granted herein shall commence upon the date this Agreement is executed.

4. **Termination.** The Temporary Construction Agreement shall terminate upon the earlier of (i) receipt of a certificate of occupancy for the Lowe's Home Center which shall be built on the McWhorter Property, or (ii) eighteen (18) months from the date hereof.

5. **Default.** If either party shall fail to perform under or breach any of the provisions of this Agreement, or shall fail to pursue its duties hereunder diligently, then the other party shall have the right under written notice to the defaulting party in addition to all the remedies to which it is entitled by law to proceed to make such payment or take such action as shall be reasonably necessary to cure such default all in the name of and for the account of the defaulting party. The defaulting party shall on demand reimburse the other party paying such sum or taking such action for the monies actually expended by it and its reasonable attorney's fees and court costs together with any and all penalties or fines if any arising from such default with interest at the legal rate permitted by law from the date of demand to the date of payment.

In addition to the remedies outlined above, the nondefaulting party shall have all remedies, to which it is entitled by law, including obtaining injunctive relief, provided, however, that any provision of law or equity to the contrary notwithstanding, such failure to remedy any default shall not terminate this Agreement nor terminate the rights of either party hereto with respect to its particular parcel, it being the express understanding of the parties hereto that this Agreement shall continue in effect notwithstanding any default by either party. In the event either party shall

institute any action or proceeding against the other relating to the provisions of this Agreement, the non-prevailing party in such action or proceeding shall reimburse the prevailing party for the reasonable expenses of attorney's fees and court costs incurred.

6. **Indemnity.** McWhorter, its successors and assigns agree to indemnify, defend, and hold Southlake, its members, successors, and assigns harmless from and against any claims (including, without limitation, personal injury and property damage claims), suits, judgments, settlements, or demands, including reasonable attorney's fees, arising from actions or omissions of McWhorter, its successors and assigns and their contractors, agents and employees arising out of the exercise of their rights under this Agreement.

Southlake, its successors and assigns agree to indemnify, defend, and hold McWhorter, its members, successors and assigns harmless from and against any claims (including, without limitation, personal injury and property damage claims), suits, judgments, settlements, or demands, including reasonable attorney's fees, arising from actions or omissions of Southlake, its successors and assigns and their contractors, agents and employees arising as result of a breach of this Agreement.

7. **Notices.** Any notice, demand, request, consent, approval, designation or other communication which any party hereto is required or desires to give or make or communicate to any other party shall be in writing and shall be given or made or communicated by United States mail or by recognized express mail service or overnight delivery service, addressed as follows:

If to McWhorter:      McWhorter Properties - Hoover, L.L.C.  
Post Office Box 908  
Anniston, Alabama 36202  
Attention: Earlon C. McWhorter

If to Southlake:      Southlake Properties  
c/o Rime Developers, Inc.  
100 Village Street  
Birmingham, Alabama 35242  
Attn: Harold Ripps

Either party may designate a different address by written notice given in accordance herewith. Notice shall be deemed to have been given, made or communicated, as the case may be on the date two (2) days following deposit in the United States mail with first class postage fully prepaid or upon the receipt from the express mail delivery service.

8. **Entire Agreement.** This Agreement contains the entire agreement between the parties relating to this subject matter hereof and no modification or amendment hereto shall be of any force or effect unless it shall be in writing and signed by the parties hereto.



9. **Severability**. If any term, provision or condition contained in this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

10. **Governing Law**. This Agreement shall be construed in accordance with the laws of the State of Alabama.

11. **Authority**. The parties hereto have the right and authority to make the agreements contained herein without the approval or consent of any third parties, including but not limited to any mortgagees.

12. **Counterparts**. This Agreement may be executed in multiple counterparts, each of which together shall constitute one original.

13. **Execution**. The parties hereto, by their duly authorized officials have executed this Agreement as of the date first above written.

14. **Covenants Run With Land**. The Permanent Slope Easement is intended to, and shall be construed as a covenant running with the Permanent Slope Easement Area and the McWhorter Property and shall benefit and burden each successive owner of the McWhorter Property and the Permanent Slope Easement Area on the terms and provisions contained herein.

**IN WITNESS WHEREOF**, the parties hereto have executed and delivered this Temporary Offsite Construction Easement as of the day and year first written above.

**McWHORTER PROPERTIES -  
HOOVER, L.L.C., an Alabama limited liability  
company**

By: Carlton C. McWhorter

Its: Manager

**SOUTHLAKE PROPERTIES, an Alabama  
general partnership**

**BY RIME DEVELOPERS, INC., its general  
partner**

By: Harold R. Rime

Its: Pres.

STATE OF ALABAMA     )  
                                     :  
SHELBY COUNTY         )

I, the undersigned, Notary Public, in and for said county in said state, hereby certify that Farlon C. McWhorter, a member of **MCWHORTER PROPERTIES -- HOOVER, L.L.C., an Alabama limited liability company**, 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 and being authorized to so do, he, as such member and with full authority, executed the same voluntarily for and as the act of said limited liability corporation.

Given under my hand and official seal this 3<sup>rd</sup> day of December, 1997.

Eddie Russell  
Notary Public

My Commission Expires: 6-21-99

STATE OF ALABAMA     )  
                                     :  
SHELBY COUNTY         )

I, the undersigned, Notary Public, in and for said county in said state, hereby certify that Harold Ripp, as Pres. of **RIME DEVELOPERS, INC., as general partner of SOUTHLAKE PROPERTIES, 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 said instrument and being authorized to so do, he, as such agent and with full authority, executed the same voluntarily for and as the act of said partnership.

Given under my hand and official seal this 6<sup>th</sup> day of Dec, 1997.

[Signature]  
Notary Public

My Commission Expires: My Notary commission expires 5/17/98

## **EXHIBIT "A"**

### **McWHORTER PROPERTY**

A tract of land in Sections 20 and 29, Township 19 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows: Begin at the NE corner of the NW 1/4 of the NW 1/4 of said Section 29 and run Southerly along the East line of said 1/4 1/4 Section a distance of 355.26 feet to a point on the Northwest right of way line of Valleydale Road; thence turn 56 deg. 21 min. 06 sec. Right and run Southwesterly along said right of way line 330.40 feet; thence turn 35 deg. 56 min. 44 sec. Right and run Westerly 478.15 feet; thence turn 71 deg. 49 min. 38 sec. Right and run Northwesterly 295.80 feet; thence turn 15 deg. 53 min. 15 sec. Right and run Northerly 251.18 feet; thence turn 16 deg. 31 min. 05 sec. right and run Northeasterly 333.60 feet; thence turn 73 deg. 31 min. 48 sec. right and run Easterly 738.03 feet; thence turn 89 deg. 56 min. 03 sec. right and run 337.80 feet to the POINT OF BEGINNING; being situated in Shelby County, Alabama.

## **EXHIBIT "B"**

### **EASEMENT AREA**

A tract of land in Section 20, Township 19 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows: Begin at the Southeast corner of the Southwest 1/4 of the Southwest 1/4 of Section 20, Township 19 South, Range 2 West, Shelby County, Alabama, and run Northerly along the East line of said 1/4 - 1/4 Section a distance of 337.80 feet to the POINT OF BEGINNING;

Thence turn 89 deg. 56 min. 03 sec. left and run Westerly a distance of 738.03 feet to a point on the Easterly right-of-way line of Interstate 65; thence turn 106 deg. 28 min. 12 sec. right and run Northeasterly along said right-of-way line a distance of 78.21 feet to a point; thence turn 73 deg. 31 min. 48 sec. right and depart said right-of-way line and run Easterly a distance of 463.43 feet to a point; thence turn 47 deg. 56 min. 47 sec. left and run Northeasterly a distance of 107.10 feet to a point on the Southerly right-of-way line of Southlake Parkway; thence turn 75 deg. 43 min. 44 sec. right and run Southeasterly along a chord of 51.59 feet of said right-of-way line being a curve to the left having a radius of 585.00 feet and an arc length of 51.61 feet to a point; thence turn 104 deg. 16 min. 16 sec. right and depart said right-of-way line and run Southwesterly a distance of 74.71 feet to a point; thence turn 132 deg. 03 min. 13 sec. left and run Easterly a distance of 185.00 feet to a point on the East line of said 1/4 - 1/4 Section, thence turn 89 deg. 56 min. 03 sec. right and run a distance of 75.00 feet to the POINT OF BEGINNING.



## EXHIBIT C

## Permanent Slope Easement

Lowe's

Hoover, Alabama

CES No. 1778.00

December 8, 1997

A tract of land in Section 20, Township 19 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the southeast corner of the southwest 1/4 of the southwest 1/4 of Section 20, Township 19 South, Range 2 West, Shelby County, Alabama, and run northerly along the east line of said 1/4 - 1/4 Section a distance of 337.80 feet to the POINT OF BEGINNING;

Thence turn 89°56'03" left and run westerly a distance of 738.03 feet to a point on the easterly right-of-way line of Interstate 65; thence turn 106°28'12" right and run northeasterly along said right-of-way line a distance of 43.34 feet to a point; thence turn 73°31'48" right and depart said right-of-way line and run easterly a distance of 54.34 feet to a point; thence turn 16°46'24" right and run southeasterly a distance of 54.56 feet to a point; thence turn 17°19'39" left and run easterly a distance of 195.34 feet to a point; thence turn 10°56'29" left and run northeasterly a distance of 240.82 feet to a point; thence turn 36°27'44" right and run southeasterly 88.88 feet to a point; thence turn 24°58'00" left and run easterly 107.40 feet to a point on the east line of said 1/4 - 1/4 Section; thence turn 89°56'03" right and run a distance of 38.27 feet to the POINT OF BEGINNING.

Said tract containing 0.70 acres more or less and subject to all encumbrances of record.

Inst # 1997-40264

1778cnst.lgt

12/11/1997-40264  
08:25 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
DOB MCD 26.00