

FIRST AMENDMENT TO EASEMENT AGREEMENT

This First Amendment to Easement Agreement ("Amendment") is made this ____ day of December, 1997 by and between McWhorter Properties - Hoover, LLC, an Alabama limited liability company ("McWhorter") and Southlake Properties, an Alabama general partnership ("Southlake") as follows:

WITNESSETH

WHEREAS, McWhorter and Southlake executed an Easement Agreement on or about the 6th day of December, 1997 ("Easement Agreement") which has been recorded on December 11, 1997 in the Probate Court of Shelby County, Alabama in Instrument 1997, Page 40257;

WHEREAS, Southlake and McWhorter desire to amend the Easement Agreement on the terms and conditions contained herein.

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 agree as follows:

1. Paragraph 2 of the Easement Agreement is deleted in its entirety and the following substituted in lieu thereof:

"Southlake hereby grants to McWhorter its contractors, employees or other agents a non-exclusive slope easement on, over, upon and across the Slope Easement Area to build, grade and maintain the 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 ("Maintenance Obligations"). Southlake reserves the right to construct a retaining wall on, over and across the Slope Easement Area ("Southlake Retaining Wall") so long as the Southlake Retaining Wall does not have any adverse impact on the McWhorter Property. McWhorter has the right to approve the plans for any Southlake Retaining Wall, which approval by McWhorter shall not be unreasonably withheld, delayed or conditioned. In the event of the construction of the Southlake Retaining Wall, McWhorter's Maintenance Obligations terminate without further action by either party. In addition, if the

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construction of the Retaining Wall makes the slope easement granted herein unnecessary in the reasonable judgment of Southlake and McWhorter, the parties agree to execute a document which will terminate the slope easement granted herein. Notwithstanding anything herein to the contrary, Southlake agrees, at all times, not to take any action on, over, across and in the Easement Area or Slope Easement Area which has any adverse effect on the McWhorter Property. In addition to the Southlake Retaining Wall, Southlake has the right to use the Easement Area and Slope Easement Area ("Southlake Slope Use") so long as such Southlake Slope Use does not have any adverse effect on the McWhorter Property. McWhorter must approve the Southlake Slope Use and any plans for the Southlake Slope Use, which consent shall not be unreasonably withheld, delayed or conditioned. If McWhorter approves the Southlake Slope Use, Southlake and McWhorter agree to use their reasonable judgment to determine if McWhorter's Maintenance Obligations should terminate in light of the proposed Southlake Slope Use and sound engineering standards."

2. Paragraph 14 shall be amended to read as follows:

"The Slope Easement granted in Paragraph 2 above is intended to and shall be construed as a covenant running with the Slope Easement Area and the McWhorter Property and shall benefit and burden each successive owner of the McWhorter Property and the Slope Easement Area on the terms and provisions contained herein, subject to modification in accordance with the provisions set forth in paragraph 2 above."

3. All other terms and conditions of the Easement Agreement remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed and delivered this First Amendment to the Easement Agreement on the day and year first above written.

[SIGNATURE PAGE FOLLOWS]

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

By: Earlton C. McWhorter

Its: Manager

**STATE OF ALABAMA)
SHELBY COUNTY)**

I, the undersigned, Notary Public, in and for said county in said state, hereby certify that Earlton 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 19th day of December, 1997.


Notary Public

My Commission Expires MY COMMISSION EXPIRES: 9-24-99

**SOUTHLAKE PROPERTIES, an Alabama
general partnership**

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

By: *Harold R. H.*

Its: *President*

**STATE OF ALABAMA)
SHELBY COUNTY)**

I, the undersigned, Notary Public, in and for said county in said state, hereby
certify that *David W. Ripp*, as *General Partner* 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 *22nd* day of *December*, 1997.

Elizabeth Berry
Notary Public

My Commission Expires: *Jan 28, 2001*

1998-00493