

**RECORDATION REQUESTED BY:**

The Money Store Commercial Mortgage Inc.  
P.O. Box 162247  
Sacramento, CA 95816-2247

**WHEN RECORDED MAIL TO:**

TMSIC/TMSCMI  
P.O. Box 15143  
Sacramento, CA 95851

Inst # 1998-25892

07/08/1998-25892  
04:15 PM CERTIFIED

SHELBY COUNTY JUDGE OF PROBATE  
006 MCD 21.00

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY

**HAZARDOUS SUBSTANCES CERTIFICATE AND INDEMNITY**

THIS HAZARDOUS SUBSTANCES CERTIFICATE AND INDEMNITY AGREEMENT DATED 7-8-98, IS MADE BY Marsha Zahumensky, a single woman (sometimes referred to below as "Borrower" and sometimes as "Indemnitor"), and The Money Store Commercial Mortgage Inc. (referred to below as "Lender"). For good and valuable consideration and to induce Lender to make a Loan to Borrower, each party executing this Agreement hereby represents and agrees with Lender as follows:

**DEFINITIONS.** The following words shall have the following meanings when used in this Agreement. All references to dollar amounts shall mean amounts in lawful money of the United States of America.

**Agreement.** The word "Agreement" means this Hazardous Substances Certificate and Indemnity Agreement, as this Hazardous Substances Certificate and Indemnity Agreement may be modified from time to time, together with all exhibits and schedules attached to this Hazardous Substances Certificate and Indemnity Agreement

**Borrower.** The word "Borrower" means individually and collectively Marsha Zahumensky.

**Environmental Laws.** The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., Chapters 6.5 through 7.7 of Division 20 of the California Health and Safety Code, Section 25100, et seq., and other applicable state or federal laws, rules, or regulations adopted pursuant to any of the foregoing.

**Hazardous Substance.** The words "Hazardous Substance" are used in their very broadest sense and refer to materials that, because of their quantity, concentration or physical chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. "Hazardous Substances" include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

**Indemnitor.** The word "Indemnitor" means individually and collectively all Borrowers executing this Agreement.

**Lender.** The word "Lender" means The Money Store Commercial Mortgage Inc., its successors and assigns.

**Loan.** The word "Loan" or "Loans" means and includes without limitation any and all commercial loans and financial accommodations from Lender to Borrower, whether now or hereafter existing, and however evidenced, including without limitation those loans and financial accommodations described herein or described on any exhibit or schedule attached to this Agreement from time to time.

**Occupant.** The word "Occupant" means individually and collectively all persons or entities occupying or utilizing the Property, whether as owner, tenant, operator or other occupant.

**Property.** The word "Property" means the following described real property, and all improvements thereon located in Shelby County, the State of Alabama:

**See Exhibit "A", attached hereto and incorporated herein by this reference.**

The Real Property or its address is commonly known as **516 Highway 119 South, Alabaster, AL 35007.**

**REPRESENTATIONS.** The following representations are made to Lender, subject to disclosures made and accepted by Lender in writing:

**Use Of Property.** After due inquiry and investigation, Borrower has no knowledge, or reason to believe, that there has been any use, generation, manufacture, storage, treatment, refinement, transportation, disposal, release, or threatened release of any Hazardous Substance by any person on, under, or about the Property.

**Hazardous Substances.** After due inquiry and investigation, Borrower has no knowledge, or reason to believe, that the Property, whenever and whether owned by previous Occupants, has ever contained asbestos, PCB or other Hazardous Substances, whether used in construction or stored on the Property.

**No Notices.** Indemnitor has received no summons, citation, directive, letter or other communication, written or oral, from any agency or department of any county or state or the U.S. Government concerning any intentional or unintentional action or omission on, under, or about the Property which has resulted in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of Hazardous Substances into any waters or onto any lands or where damage may have resulted to the lands, waters, fish, shellfish, wildlife, biota, air or other natural resources.

**HAZARDOUS SUBSTANCES CERTIFICATE AND INDEMNITY**  
(Continued)

Loan No 510302516

**AFFIRMATIVE COVENANTS.** Subject to disclosures made and accepted by Lender in writing, Indemnitor hereby covenants with Lender as follows:

**Use Of Property.** Indemnitor will not use and does not intend to use the Property to generate, manufacture, refine, transport, treat, store, handle or dispose of any Hazardous Substances.

**Compliance with Environmental Laws.** Indemnitor shall cause the Property and the operations conducted thereon to comply with all Environmental Laws and orders of any governmental authorities having jurisdiction under any Environmental Laws and shall obtain, keep in effect and comply with all governmental permits and authorizations required by Environmental Laws with respect to such Property or operations. Indemnitor shall furnish Lender with copies of all such permits and authorizations and any amendments or renewals thereof and shall notify Lender of any expiration or revocation of such permits or authorizations.

**Preventive, Investigatory and Remedial Action.** Indemnitor shall exercise extreme care in handling Hazardous Substances if Indemnitor uses or encounters any. Indemnitor, at Indemnitor's expense, shall undertake any and all preventive, investigatory or remedial action (including emergency response, removal, containment and other remedial action) (a) required by any applicable Environmental Laws or orders by any governmental authority having jurisdiction under Environmental Laws, or (b) necessary to prevent or minimize property damage (including damage to Occupant's own property), personal injury or damage to the environment, or the threat of any such damage or injury, by releases of or exposure to Hazardous Substances in connection with the Property or operations of any Occupant on the Property. In the event Indemnitor fails to perform any of Indemnitor's obligations under this section of the Agreement, Lender may (but shall not be required to) perform such obligations at Indemnitor's expense. All such costs and expenses incurred by Lender under this section and otherwise under this Agreement shall be reimbursed by Indemnitor to Lender upon demand with interest at the Loan default rate, or in the absence of a default rate, at the Loan interest rate. Lender and Indemnitor intend that Lender shall have full recourse to Indemnitor for any sum at any time due to Lender under this Agreement. In performing any such obligations of Indemnitor, Lender shall at all times be deemed to be the agent of Indemnitor and shall not by reason of such performance be deemed to be assuming any responsibility of Indemnitor under any Environmental Law or to any third party. Indemnitor hereby irrevocably appoints Lender as Indemnitor's attorney-in-fact with full power to perform such of Indemnitor's obligations under this section of the Agreement as Lender deems necessary and appropriate.

**Notices.** Indemnitor shall immediately notify Lender upon becoming aware of any of the following:

- (a) Any spill, release or disposal of a Hazardous Substance on any of the Property, or in connection with any of its operations if such spill, release or disposal must be reported to any governmental authority under applicable Environmental Laws.
- (b) Any contamination, or imminent threat of contamination, of the Property by Hazardous Substances, or any violation of Environmental Laws in connection with the Property operations conducted on the Property.
- (c) Any order, notice of violation, fine or penalty or other similar action by any governmental authority relating to Hazardous Substances or Environmental Laws and the Property or the operations conducted on the Property.
- (d) Any judicial or administrative investigation or proceeding relating to Hazardous Substances or Environmental Laws and to the Property or the operations conducted on the Property.
- (e) Any matters relating to Hazardous Substances or Environmental Laws that would give a reasonably prudent Lender cause to be concerned that the value of Lender's security interest in the Property may be reduced or threatened or that may impair, or threaten to impair, Indemnitor's ability to perform any of its obligations under this Agreement when such performance is due.

**Access to Records.** Indemnitor shall deliver to Lender, at Lender's request, copies of any and all documents in Indemnitor's possession or to which it has access relating to Hazardous Substances or Environmental Laws and the Property and the operations conducted on the Property, including without limitation results of laboratory analyses, site assessments or studies, environmental audit reports and other consultants' studies and reports.

**Inspections.** Lender reserves the right to inspect and investigate the Property and operations thereon at any time and from time to time, and Indemnitor shall cooperate fully with Lender in such inspection and investigations. If Lender at any time has reason to believe that Indemnitor or any Occupants of the Property are not complying with all applicable Environmental Laws or with the requirements of this Agreement or that a material spill, release or disposal of Hazardous Substances has occurred on or under the Property, Lender may require Indemnitor to furnish Lender at Indemnitor's expense an environmental audit or a site assessment with respect to the matters of concern to Lender. Such audit or assessment shall be performed by a qualified consultant approved by Lender. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Indemnitor or to any other person.

**INDEMNITOR'S WAIVER AND INDEMNIFICATION.** Indemnitor hereby indemnifies and holds harmless Lender and Lender's officers, directors, employees and agents, and Lender's successors and assigns and their officers, directors, employees and agents against any and all claims demands, losses, liabilities, costs and expenses (including without limitation attorneys' fees at trial and on any appeal or petition for review) incurred by such person (a) arising out of or relating to any investigatory or remedial action involving the Property, the operations conducted on the Property or any other operations of Indemnitor or any Occupant and required by Environmental Laws or by orders of any governmental authority having jurisdiction under any Environmental Laws, or (b) on account of injury to any person whatsoever or damage to any property arising out of, in connection with, or in any way relating to (i) the breach of any covenant contained in this Agreement, (ii) the violation of any Environmental Laws, (iii) the use, treatment, storage, generation, manufacture, transport, release, spill disposal or other handling of Hazardous Substances on the Property, (iv) the contamination of any of the Property by Hazardous Substances by any means whatsoever (including without limitation any presently existing contamination of the Property), or (v) any costs incurred by Lender pursuant to this Agreement. In addition to this indemnity, Indemnitor hereby releases and waives all present and future claims against Lender for indemnity or contribution in the event Indemnitor becomes liable for cleanup or other costs under any Environmental Laws.

**PAYMENT: FULL RECOURSE TO INDEMNITOR.** Lender and Indemnitor intend that Lender shall have full recourse to Indemnitor for Indemnitor's obligations hereunder as they become due to Lender under this Agreement. Such liabilities, losses, claims, damages and expenses shall be reimbursable to Lender as Lender's obligations to make payments with respect thereto are incurred, without any requirement of waiting for the ultimate outcome of any litigation, claim or other proceeding, and Indemnitor shall pay such liability, losses, claims, damages and expenses to Lender as so incurred within thirty (30) days after written notice from Lender. Lender's notice shall contain a brief itemization of the amounts incurred to the date of such notice. In addition to any remedy available for failure to pay periodically such amounts, such amounts shall thereafter bear interest at the Loan default rate, or in the absence of a default rate, at the Loan interest rate.

**SURVIVAL.** The covenants contained in this Agreement shall survive (a) the repayment of the Loan, (b) any foreclosure, whether judicial or nonjudicial, of the Property, and (c) any delivery of a deed in lieu of foreclosure to Lender or any successor of Lender. The covenants contained in this Agreement shall be for the benefit of Lender and any successor to Lender, as holder of any security interest in the Property or the indebtedness secured thereby, or as owner of the Property following foreclosure or the delivery of a deed in lieu of foreclosure.

**ADDITIONAL PROVISIONS.** In the event that Borrower fails to perform any necessary preventive, investigatory or remedial action to the satisfaction of

**HAZARDOUS SUBSTANCES CERTIFICATE AND INDEMNITY**  
**(Continued)**

Loan No 510302516

Lender within the period of time stated in Lender's notice, Lender may declare a default of the loan under the terms and conditions contained in the Related Documents. The words "Related Documents" mean and include without limitation all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the indebtedness.

**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Agreement:

**Applicable Law.** This Agreement has been delivered to Lender and accepted by Lender in the State of California. Except as set forth hereinafter, this Agreement shall be governed by, construed and enforced in accordance with the laws of the State of California, except and only to the extent of procedural matters related to the perfection and enforcement by Lender of its rights and remedies against the Property, which matters shall be governed by the laws of the State of Alabama. However, in the event that the enforceability or validity of any provision of this Agreement is challenged or questioned, such provision shall be governed by whichever applicable state or federal law would uphold or would enforce such challenged or questioned provision.

**Attorneys' Fees; Expenses.** Indemnitor agrees to pay upon demand all of Lender's costs and expenses, including attorneys' fees and Lender's legal expenses, incurred in connection with the enforcement of this Agreement. Lender may pay someone else to help enforce this Agreement, and Indemnitor shall pay the costs and expenses of such enforcement. Costs and expenses include Lender's attorneys' fees and legal expenses whether or not there is a lawsuit, including attorneys' fees and legal expenses for bankruptcy proceedings (and including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Indemnitor also shall pay all court costs and such additional fees as may be directed by the court.

**Severability.** If a court of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Agreement in all other respects shall remain valid and enforceable.

**Waivers and Consents.** Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by any party of a provision of this Agreement shall not constitute a waiver of or prejudice the party's right otherwise to demand strict compliance with that provision or any other provision. No prior waiver by Lender, nor any course of dealing between Lender and Indemnitor, shall constitute a waiver of any of Lender's rights or any of Indemnitor's obligations as to any future transactions. Whenever consent by Lender is required in this Agreement, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required. Indemnitor hereby waives notice of acceptance of this Agreement by Lender.

**EACH PARTY TO THIS AGREEMENT ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS AGREEMENT, AND EACH AGREES TO ITS TERMS. NO FORMAL ACCEPTANCE BY LENDER IS NECESSARY TO MAKE THIS AGREEMENT EFFECTIVE.**

**INDEMNITOR:**

x Marsha Zahumensky  
Marsha Zahumensky

**LENDER:**

The Money Store Commercial Mortgage Inc.

By: Sam A. Rosta  
Authorized Officer

This Hazardous Substances Certificate and Indemnity Agreement prepared by: X \_\_\_\_\_

Name of Signer: Mary Borges

HAZARDOUS SUBSTANCES CERTIFICATE AND INDEMNITY  
(Continued)

Loan No 510302516

INDIVIDUAL ACKNOWLEDGMENT

STATE OF ALABAMA )  
 ) SS  
COUNTY OF JEFFERSON )

I, the undersigned authority, a Notary Public in and for said county in said state, hereby certify that **Marsha Zahumensky**, whose name 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 Agreement, he or she executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 8 day of July, 19 98

*[Signature]*  
Notary Public

My commission expires 1-5-99

LENDER ACKNOWLEDGMENT

STATE OF Alabama )  
 ) SS  
COUNTY OF Jefferson )

*whose name is signed to the foregoing instrument, and who is known to me, executed the same in his capacity as loan officer of The Money Store Commercial Mortgage, Inc., with full authority.*

I, the undersigned authority, a Notary Public in and for said county in said state, hereby certify that **Sam A Renta, Jr.**  
Given under my hand and official seal this 8 day of July, 19 98

*[Signature]*  
Notary Public

My commission expires 1-5-99

Exhibit "A" to Hazardous Substances Certificate and Indemnity

Commence at the Southwest corner of the Southeast one-quarter of the Northeast one-quarter of Section 2, Township 21 South, Range 3 West, run thence in an easterly direction along the south line of said quarter-quarter section for a distance of 314.50 feet; thence turn an angle to the left of 148 degrees 27 minutes and run in a northwesterly direction for a distance of 724.90 feet to a point on the Southeastery right of way line of Alabama Highway No. 119; thence run an angle to the right of 96 degrees 09 minutes 12 seconds to the tangent of the following described course, said course being situated on a curve to the left having a central angle of 05 degrees 15 minutes 27 seconds and a radius of 1,344.85 feet; thence run along the arc of said curve to the left in a northeasterly direction along the Southeastery right of way line of Alabama Highway No. 119 for a distance of 123.40 feet to the end of said curve; thence run along a tangent, if extended to said curve in a Northeasterly direction continuing along the Southeastery right of way line of Alabama Highway No. 119 for a distance of 495.55 feet to the point of beginning. From the point of beginning thus obtained, thence continue along last described course for a distance of 18.68 feet to the point of beginning of a curve to the left, said curve having a central angle of 07 degrees 58 minutes 46 seconds and a radius of 1,075.46 feet; thence run along the arc of said curve to the left in a northeasterly direction along the southeasterly right of way of Alabama Highway No. 119 for a distance of 149.78 feet; thence turn an angle to the right of 105 degrees 55 minutes 24 seconds from the tangent of last described course and run in a Southeastery direction for a distance of 5.33 feet; thence turn on an angle to the right of 06 degrees 47 minutes 04 seconds and run in a Southeastery direction for a distance of 205 feet; thence turn an angle to the right of 69 degrees 59 minutes 39 seconds and run in a Southwesterly direction for a distance of 46.24 feet; thence turn an angle to the left of 19 degrees 14 minutes 47 seconds and run in a Southwesterly direction for a distance of 75.60 feet; thence turn an angle to the right of 114 degrees 30 minutes 53 seconds and run in a northwesterly direction for a distance of 225.83 feet to the point of beginning.

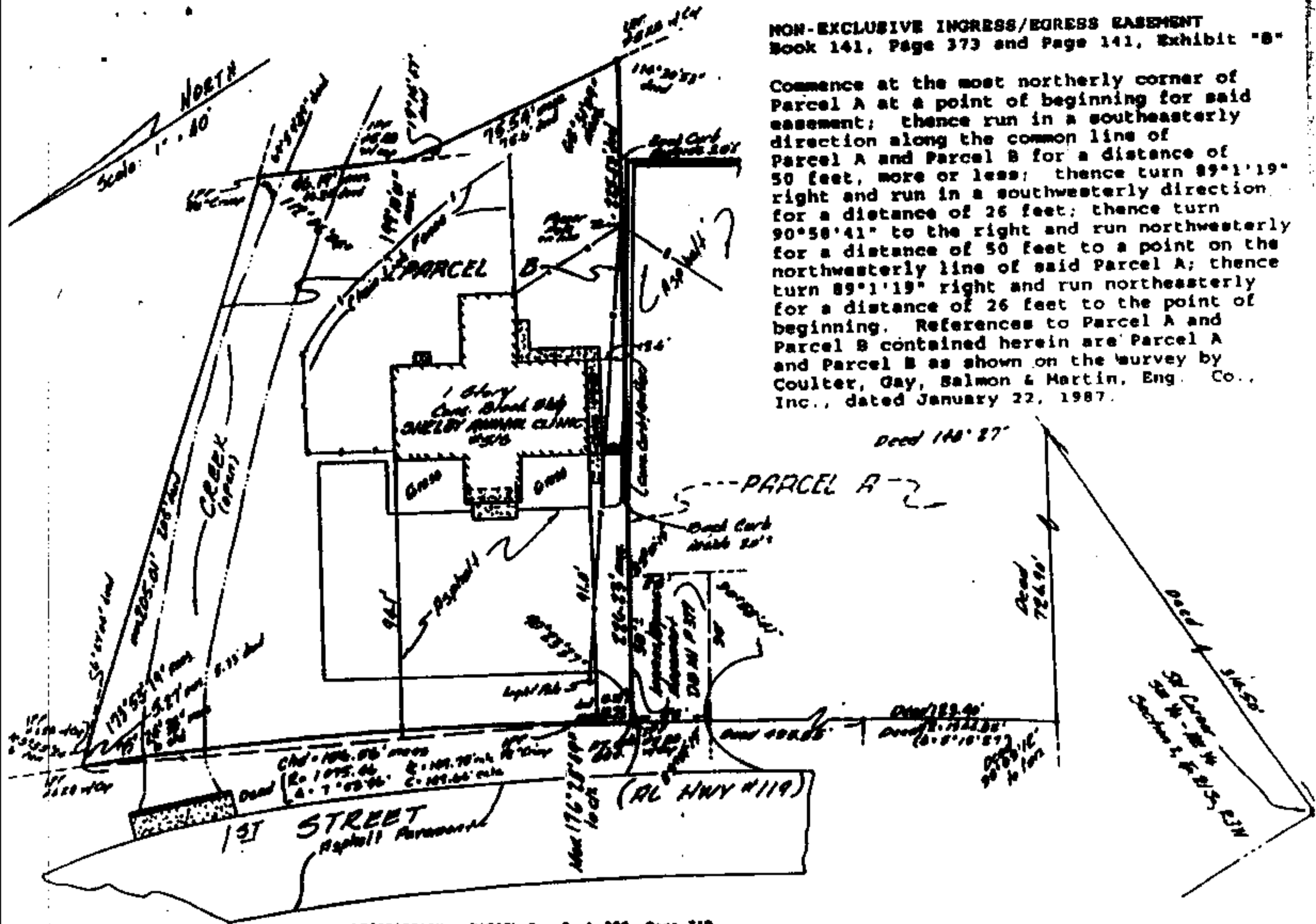
Situated in Shelby County, Alabama.

Together with a non-exclusive ingress/egress easement as described in the survey attached hereto as Exhibit "B" and incorporated herein by this reference.



**NON-EXCLUSIVE INGRESS/EGRESS EASEMENT**  
 Book 141, Page 373 and Page 141, Exhibit "B"

Commence at the most northerly corner of Parcel A at a point of beginning for said easement; thence run in a southeasterly direction along the common line of Parcel A and Parcel B for a distance of 50 feet, more or less; thence turn 89°1'19" right and run in a southwesterly direction for a distance of 26 feet; thence turn 90°58'41" to the right and run northwesterly for a distance of 50 feet to a point on the northwesterly line of said Parcel A; thence turn 89°1'19" right and run northeasterly for a distance of 26 feet to the point of beginning. References to Parcel A and Parcel B contained herein are Parcel A and Parcel B as shown on the survey by Coulter, Gay, Salmon & Martin, Eng. Co., Inc., dated January 22, 1987.



**DESCRIPTION: PARCEL B - Book 126, Page 710**  
 Commence at the southwest corner of the southeast one-quarter of the Northeast one-quarter of Section 2, Township 21 South, Range 2 West, run thence in an easterly direction along the south line of said quarter-quarter section for a distance of 314.80 feet thence run on an angle to the left of 148 degrees 27 minutes and run in a northeasterly direction for a distance of 754.78 feet to a point on the Southeastery right of way line of Alabama Highway No. 119; thence run on an angle to the right of 96 degrees 07 minutes 12 seconds to the tangent of the following described course, said course being situated on a curve to the left having a central angle of 66 degrees 18 minutes 27 seconds and a radius of 1,344.88 feet thence run along the arc of said curve to the left in a northeasterly direction along the Southeastery right of way line of Alabama Highway No. 119 for a distance of 123.40 feet to the end of said curve; thence run along a tangent, if extended to said curve in a Northeasterly direction continuing along the Southeastery right of way line of Alabama Highway No. 119 for a distance of 478.88 feet to the point of beginning. From the point of beginning thus obtained, thence continue along last described course for a distance of 18.68 feet to the point of beginning of a curve to the left, said curve having a central angle of 67 degrees 39 minutes 46 seconds and a radius of 1,878.48 feet; thence run along the arc of said curve to the left in a northeasterly direction along the Southeastery right of way of Alabama Highway No. 119 for a distance of 149.78 feet; thence turn on an angle to the right of 108 degrees 28 minutes 34 seconds from the tangent of last described course and run in a Southeastery direction for a distance of 8.33 feet; thence turn on an angle to the right of 64 degrees 47 minutes 04 seconds and run in a Southeastery direction for a distance of 308 feet; thence turn on an angle to the right of 67 degrees 37 minutes 37 seconds and run in a Southeastery direction for a distance of 44.34 feet; thence turn on an angle to the left of 17 degrees 14 minutes 47 seconds and run in a Southwesterly direction for a distance of 75.80 feet; thence turn on an angle to the right of 114 degrees 30 minutes 58 seconds and run in a northeasterly direction for a distance of 228.83 feet to the point of beginning.

Situated in Shelby County, Alabama.  
 Subject to easements, rights-of-way, and restrictions of record.

STATE OF ALABAMA }  
 SHELBY COUNTY

I, Donald L. Hadden, a Land Surveyor of Birmingham, Alabama, hereby certify that the above is a true and correct plat or map of Lot ..... Block ..... as shown by the map of same recorded in Map Book ..... Page ..... in the office of the Judge of Probate of Shelby County, Alabama, that all parts of this survey and drawing have been completed in accordance with the requirements of the Minimum Technical Standards for the Practice of Land Surveying in the State of Alabama, that the building now on said lot is within the bounds of said lot, that there are no visible encroachments, except those shown, from adjoining properties and that there are no rights-of-ways, easements, or joint driveways over or across said land visible on the surface except as shown; that there are no visible electric or telephone wires (excluding wires which serve the premises only) or structures or supports therefor including poles, anchors and guy wires, on or over said premises except as shown.

The correct street address is No. 316...Alabama Highway...No. 119...South...Alabaster...Alabama...39007.

According to my survey this 20th day of June, 1998 Revised 7-8-98

DON HADDEN AND ASSOCIATES, INC.  
 9430 Parkway East  
 BIRMINGHAM, ALABAMA 35213  
 Phone 836-8385

*Donald L. Hadden*  
 Donald L. Hadden - Reg. No. 9681

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 DON HAD  
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*Handwritten signature*