

134EE-86ET

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RECITALS:

A. Declarant is the owner of a parcel of land situated in Shelby County, Alabama which is more particularly described on **Exhibit A** attached hereto (the "Property").

B. Declarant intends to develop a portion of the Property as a commercial shopping center to be known as "Chelsea Corners." In the future, Declarant may develop the remainder of the Property itself or convey portions of the Property (hereinafter, "Lots") to parties unrelated to Declarant.

C. Declarant has received approval from the applicable authorities of Shelby County, Alabama and the State of Alabama Department of Public Health to develop the Property, provided Declarant (i) constructs (or causes to be constructed) a private on-site low-pressure sewage disposal system to service the Property (the "Private Sewer System"), and (ii) establishes a mechanism to provide for the ongoing operation and maintenance of the Private Sewer System.

D. Declarant desires to establish for the benefit of Declarant and Declarant's successors and assigns and all owners of the Lots (each such owner being hereinafter referred to as an "Owner"), certain restrictions relating to the Private Sewer System and certain permanent and non-exclusive easements as hereinafter described for ingress, egress and access for the installation, construction, and maintenance of the Private Sewer System.

E. Greensprings Associates, Inc., an Alabama corporation ("Greensprings"), is the owner of the parcel of land described on **Exhibit B** attached hereto ("Parcel B"). Parcel B adjoins the Property. Greensprings has previously constructed a septic tank system to serve its operations on Parcel B and, pursuant to the terms of a separate agreement with Declarant, Greensprings has agreed to exchange certain real property with Declarant, including the property on which the field lines presently servicing the septic tank located on Parcel B are located. Pursuant to the terms of this agreement, (i) Declarant has agreed to connect the septic tank now located on Parcel B to the Private Sewer System, and (ii) Greensprings has agreed that it shall be an "Owner" and that Parcel B shall be deemed to be one of the "Lots" which is benefitted by and made subject to the terms and conditions of this Declaration.

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SHELBY COUNTY JUDGE OF PROBATE
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NOW, THEREFORE, in consideration of the premises, Declarant does hereby declare that the Property is subject to the following easements, restrictions, and agreements, which shall be for the benefit of Declarant, and its successors and assigns:

1. **Description of Private Sewer System.**

(a) Declarant has established Chelsea Services LLC, an Alabama limited liability company (hereinafter, "Operator"), which shall be the operator of the Private Sewer System.

(b) The Private Sewer System shall consist of the individual septic tanks which shall serve each Lot, together with the pipes or pipe systems, pumps, and grinders which shall connect these septic tanks to the field lines (the area in which the field lines will be located is described in **Exhibit C** hereto and is hereinafter referred to as the "Disposal Field"). Each Owner shall own the septic tank and related pipe or pipe systems, pumps and grinders located on its Lot. Operator shall own the Disposal Field and all pipes or pipe systems, pumps and grinders which comprise a part of the Private Sewer System commencing from the point at which the discharge pipe from each Owner's septic tank is connected to the Operator's trunk line.

(c) Operator hereby subjects the Disposal Field to a permanent easement for use as a disposal field to serve the Private Sewer System. This easement shall benefit the Owners of the Lots and shall continue for so long the Private Sewer System shall operate, but shall terminate at such time as other public or private sewer service shall be made available to the Property and connected to the Lots as contemplated by Section 6 below.

(d) The sewer services to be provided by Operator shall be offered in accordance with all applicable federal, state and local laws, regulations, rules, and ordinances, including, without limitation, the rules duly and regularly established from time to time and on file with the Alabama State Department of Health and/or the Shelby County Department of Health.

(e) The sewer service to be provided by Operator shall be limited to the collection, treatment and disposal from the Property of domestic wastes only, such as water-carried human, animal or vegetable wastes, subject to all applicable federal, state and local laws, regulations, rules and ordinances. No Owner shall use the Private Sewer System for disposing storm water, air conditioner condensate, ground water, roof drains and/or large quantities of water such as may occur from swimming pools. No Owner shall place or deposit, or permit to be placed or deposited, in any portion of the Private Sewer System any material other than domestic waste, including, without limitation, hazardous, toxic or radioactive wastes or substances, as such terms may be defined from time to time by any applicable federal, state or local laws, regulations, rules or ordinances. Each Owner further agrees to use all reasonable care in the operation and use of the septic tanks, pumps, pipes, grinders and other such equipment located on its Lot, to prevent any damage to or obstruction of any portion of the Private Sewer System.

(f) Operator shall use all reasonable care in providing constant and uninterrupted sewer service to each Owner. Notwithstanding the foregoing, Operator hereby reserves the right to

interrupt or reduce sewer service at any time and from time to time in the event of emergencies, to perform inspections, to maintain, repair or upgrade the Private Sewer System, or to perform any other obligation or exercise any other right of Operator under this Declaration. Operator hereby agrees that (i) Operator will use reasonable efforts to give the Owners advance notice of any planned interruption or reduction, stating the reason therefor, and the probable duration thereof; (ii) Operator shall use reasonable efforts to attempt to schedule any such interruption or reduction in service at times which will be less disruptive to the operation of the businesses conducted on the Lots; (iii) there will be not interruption or reduction in sewer service unless reasonably necessary and only to the extent reasonably necessary; and (iv) Operator will act reasonably and in good faith in the implementation of the provisions of this section.

2. Approval of Certain Plans; Tap Fee.

(a) Each Owner shall be responsible for all costs associated with installing its own septic tank system, including the related pumps and grinders, as well as the costs of otherwise connecting its septic tank to the trunk lines to be constructed by Operator (such machinery, equipment, appliances and appurtenances thereto shall be installed by Owner in conformity with the requirements of Operator and all applicable federal, state and local laws, regulations, rules and ordinances), but only after (i) first obtaining Operator's prior written approval of the design and configuration of the Owner's proposed septic tank system and (ii) establishing the maximum permitted discharge therefrom into the Private Sewer System (the "Approved Plans"). As part of the approval process, each Owner shall execute a Sewer Capacity Restriction Agreement in the form attached hereto as **Exhibit D**. No Owner may connect to the Private Sewer System, or construct any modifications to any previously approved aspects of the Private Sewer System, without obtaining the prior written approval of Operator.

(b) Concurrently with the submission by an Owner of the plans contemplated in subparagraph (a) above, each Owner shall pay to Operator a tap fee in an amount determined by Operator. Operator may, in its sole discretion, amend, modify or change the tap fees from time to time.

3. Maintenance of Private Sewer System.

(a) Each Owner agrees that it shall be responsible for maintaining in a good and safe condition in accordance with the rules and regulations which may be established by Operator pursuant to section 2(a) the terms of this Declaration and all applicable federal, state and local laws, regulations, rules and ordinances, the septic tank and related pumps, grinders and piping systems located on its Lot.

(b) If any Owner shall fail to maintain the septic tank and related pumps, grinders and piping systems located on its Lot, Operator may enter upon such Lot for the purpose of performing any necessary repairs or maintenance to such system, which repairs shall be undertaken for the benefit of such Owner, and such Owner shall be obligated to repay Operator for the full cost

associated with such repair work, plus an administrative fee of an additional fifteen percent (15%). Except in the case of emergency repairs, Operator agrees not to exercise this right until it has first provided the Owner of the Lot in question not less than fifteen (15) days prior written notice of its intention to perform any such repair or maintenance work. If during the foregoing fifteen (15) day period, such Owner completes the necessary repair or maintenance work, or commences to perform such work and thereafter diligently continues performing the same to completion, Operator will refrain from exercising its right to cause such work to be performed. Notwithstanding the foregoing, each Owner hereby agrees to promptly notify Operator of any necessary or appropriate repairs to any portion of the Private Sewer System located in, under, through or upon its Lot.

(c) Operator shall coordinate the maintenance, repair and alteration of the portions of the Private Sewer System which it owns (as described in Section 1 above) in accordance with all applicable federal, state and local laws, regulations, rules and ordinances. In addition to such maintenance obligations, Operator shall also schedule the routine pumping of the individual septic tanks located on each Lot. Operator shall schedule this routine pumping of the individual septic tanks as frequently as Operator deems necessary, in Operator's reasonable judgment and based upon the usage of the Private Sewer System. In the event that the use of a benefitted Lot requires pumping of its individual septic tank more frequently than the routinely scheduled pumping, that Owner shall be responsible for the scheduling of such additional pumping at its sole cost and expense. Each Owner shall use reasonable efforts to notify Operator of its need for additional pumping, so the Operator may coordinate the scheduling of such additional pumping work.

4. **License and Easement Reserved.**

(a) Declarant hereby reserves for the benefit of Operator, its employees, agents, independent contractors, and Operator's successors and assigns, an irrevocable and transferable license to enter upon the portion of any Lot upon which the septic tank and related pumps, grinders and piping systems are located, as designated on the Approved Plans for the Lot, at all normal business hours and otherwise in the event of emergencies, for any purpose relating to the delivery of sewer service under this Declaration or the exercise of any rights related thereto, or the performance of any obligations imposed upon Operator or Declarant by this Declaration. Except in the case of an emergency (when no advance notice shall be required), before exercising its right to enter upon a Lot, Operator shall comply with the notice and other provisions set forth in Section 1(f) of this Declaration.

(b) Declarant also hereby reserves for the benefit of Operator, its employees, agents, independent contractors, and Operator's successor and assigns a permanent, non-exclusive easement for ingress, egress and access over and across the areas of each of Lot depicted on the Approved Plans for the purpose of repairing, maintaining and otherwise providing the sewage disposal services contemplated by this Declaration to Owner's property by means of the Private Sewer System. Upon request, each Owner shall execute in favor of Declarant a written easement confirming the foregoing, such easement to be substantially in the form attached hereto as **Exhibit E**. Except in the case of an emergency (when no advance notice shall be required), before entering upon a Lot to perform any of the activities described above, Operator shall comply with the notice and other provisions set forth

in Section 1(f) of this Declaration. The easements reserved or created hereby shall run with the land for the term of this Declaration. Notwithstanding the foregoing, Operator agrees that each Owner shall be permitted, upon written notice to Operator, to relocate the portion of the Private Sewer System located on its lot, provided (i) Owner grants Operator with a suitable replacement easement covering the area in which the relocated portions of the Private Sewer System are located, and (ii) Owner pays all costs associated with such relocation and provides Operator with adequate assurances that such work will not damage or impair the operation of the Private Sewer System.

5. Fees and Charges for Operation of Private Sewer System.

(a) Each Owner agrees to pay Operator a monthly (or, at Operator's option, quarterly) fee for furnishing sewer services to such Owner. The fees charged shall be based upon the number of gallons of domestic water service used by each Owner during the preceding month (or quarter), as reflected on each Owner's water bill. Operator agrees to establish a uniform fee schedule for providing the services described in this Declaration. Operator may, in its sole discretion, amend, modify or change the use fees set forth in the fee schedule at any time and from time to time during the term hereof, provided that Operator shall use reasonable efforts and act in good faith to operate the Private Sewer System in a cost-efficient manner so as to keep its fees reasonable and generally comparable to the charges imposed by other similarly-situated public or private sewer systems. All changes to the use fees shall become effective on the date Operator notifies the Owners thereof or at such later time as designated by Operator. Monthly (or quarterly, as applicable) bills shall be rendered to each Owner, in arrears, for the use fees and mailed to the Owner's address. The use fees shall be due and payable to Operator upon receipt by Owner of the bill therefor and shall become delinquent if not paid by Customer within fifteen (15) days of the date of mailing. Any monthly use fees received by Operator more than fifteen (15) days of the date of mailing of the monthly bill therefor shall be subject to a late fee in the amount of Twenty-Five and No/100 Dollars (\$25.00), which fee shall also be subject to adjustment from time-to-time.

(b) The quantity of sewer service consumed by each Owner shall be the quantity of water consumed as measured by the meter installed by the applicable water utility on the Lot. This measurement shall be final and conclusive, except when the meters fail to register or if an error in meter reading occurs. In such cases, the quantity delivered during the period in question shall be estimated after due consideration of previous or subsequent properly measured sewer service. Operator shall have no duty to test the meters installed by the applicable water utility and shall have no liability with respect to the accuracy thereof.

(c) In the event any alterations or modifications of the Private Sewer System are required at any time during the term of this Declaration as a result of the need for increased capacity attributable to a change or alteration in the use of a benefitted Lot, the Owner of such Lot shall bear the full cost of any installation, construction, maintenance, repair and alteration undertaken to upgrade the Private Sewer System. In the event that such an upgrade is caused by a change or alteration in use by more than one Lot, the costs associated with the upgrade shall be borne proportionately by the Lots responsible for the upgrade. For the purposes of this provision, each Lot

shall be deemed to have the capacity requirement indicated on the Approved Plans and Sewer Capacity Restriction Agreement pertaining to such Lot.

(d) Operator shall maintain accurate books and records of all expenses incurred in the operation of the Private Sewer System. After first giving Operator reasonable prior written notice, each Owner shall have the right to inspect the books and records of Operator during normal business hours, including all records of expenses for the operation of the Private Sewer System and for the computation of the use fees charged to the Owners.

6. Future Installation of Private or Public Sewage Systems.

(a) At some time in the future the Property and each Lot comprising a part of the Property may be provided with sewer service by another private or public sewage system. Declarant further acknowledges that the Private Sewer System contemplated by this Declaration is not intended to be a permanent sewage disposal system, but rather is intended to service the Property and each Lot for so long as but only until such time as other suitable private or public sewer service is made available to the Property. Accordingly, each Owner shall be obligated, upon request by Operator, to hook up to such private or public sewer system if and when it is constructed and to pay all costs associated therewith. Operator agrees that if it makes such a request, it will (i) not cease operating the Private Sewer System until such time as the replacement system is operational and the Lots have been connected thereto; (ii) use reasonable efforts to procure for each Owner not less than the same sewage capacity that Operator is then providing to each Owner; and (iii) if Declarant owns any of the Property at such time, cause Declarant to pay the same fees and other charges that the new operator imposes on the other Owners.

(b) Any and all costs or obligations associated with the installation of any private or public sewage system shall be paid and performed for solely by the Owner benefitted thereby in accordance with the rules, regulations and ordinances of the applicable private or public sewer system and any other applicable governmental jurisdiction.

(c) If a private or public sewage system provides service to the Property in accordance with the provisions of this Section 6, Declarant and/or Operator may transfer and assign to such private or public sewer system any of the easements and rights reserved or granted to each of them hereunder and under the other related easements and agreements, and upon such transfer, Declarant and Operator shall both be released from all future liabilities or obligations under all of such agreements pertaining to the operation of the Private Sewer System.

7. Building Restriction. No building or other permanent structure shall be constructed or installed upon any of the easement areas created and granted herein without the prior written approval of Operator, such approval not to be unreasonably withheld or delayed provided the proposed building or structure shall not interfere with the operation or maintenance of the Private Sewer System.

8. **Construction on Lots.**

(a) Prior to undertaking any construction activities on any Lot, the Owner shall contact Operator in order to confirm the exact location of the easements created and granted by this Declaration in order to not damage or disrupt the operation of the Private Sewer System. In the event that a portion of the Private Sewer System, including but not limited to any removal of grass, sod or plantings, is disturbed by such construction activities, such Owner shall promptly restore such portion of the Private Sewer System to its state prior to such disturbance at such Owner's sole cost and expense. In the event such Owner fails to perform such restorative work, or in the event Owner's construction activities cause damage to the Private Sewer System which requires immediate corrective action, Operator shall have the right, but not the obligation, to perform such repair or maintenance on behalf of such Owner and to deliver to such Owner a bill in the amount of the actual cost of the work performed, plus an administrative fee of an additional fifteen percent (15%). The Owner shall have fifteen (15) days from receipt of such bill in order to pay the amount invoiced to Operator. Prior to the implementation of the provisions of this Section 8(a), Operator must first comply with the notice and conditions for entry set forth in Section 1(f) of this Declaration.

(b) Each Owner performing construction activities shall indemnify and hold each other Owner (including the Declarant and Operator) harmless from and against all costs, liability and expense, including, without limitation, reasonable attorneys' fees, in connection with any claim for personal injury and/or property damage occurring from damage or destruction to the Private Sewer System resulting from such Owner's construction activities. This provision shall survive the termination of this Declaration.

9. **Insurance.** During the term of this Declaration, Operator shall be responsible for and hereby covenants and agrees to maintain liability insurance for the Private Sewer System in an amount not less than \$1,000,000 with respect to injury to any one accident or disaster and in an amount of \$1,000,000 with respect to damaged property. This obligation of Operator shall in no way relieve each Owner of (i) its responsibility for purchasing and maintaining liability insurance for each Owner's respective Lot or (ii) each Owner's obligation to indemnify the other Owners (including the Declarant and Operator) under Section 8(b) above.

10. **Condemnation.** In the event of condemnation by any duly constituted authority for a public or quasi-public use of all or any part of a burdened Lot containing a portion of the Private Sewer System, the full award for such taking shall be payable to the Owner of such Lot, but Operator shall be permitted to file a separate claim to recover any costs incurred by Operator in repairing or replacing any portion of the Private Sewer System owned by Operator which may be taken in connection with such condemnation.

11. **Payment of Obligations.**

(a) Any amount required to be paid hereunder which is not paid within fifteen (15) days of its due date shall bear interest at the annual interest rate of eighteen percent (18%) (or the maximum allowed by law, if such maximum is lower than 18%) and Operator (as the party to whom such amounts are owed) shall have the right to bring suit against the party owing such amounts to recover a money judgment for all such amounts without foreclosing or waiving the liens securing same as provided for below. For purposes of this provision, Operator (as the party to whom such amounts are owed) shall be referred to as the "Obligee" and the party owing such amounts shall be referred to as the "Obligor". All amounts owed hereunder which are not paid within fifteen (15) days of their due date, together with interest thereon and the costs of collection, shall become a continuing lien and charge on the Lot owned by Obligor, which shall bind such Lot in the hands of such Obligor, and its successors and assigns. Such lien shall be superior to all other liens and charges against the Lot, except on the lien for ad valorem tax and all sums unpaid on a first priority mortgage to secure a debt of record securing sums borrowed for the acquisition and/or improvement of the subject Lot. Obligee may institute suit against Obligor to foreclose the lien in the same manner as mechanics' and materialmen liens are foreclosed under applicable Alabama law, and in addition, or as an alternative, seek a personal judgment against Obligor for the amount of the unpaid assessment plus accrued interest thereon, all such remedies being cumulative. In any such suit or proceeding, Obligor shall be required to pay the costs, expenses and Obligee's actual attorney's fees incurred. Obligee shall have the power to bid on the Lot in question at a foreclosure or other legal sale and to acquire (if the highest bidder), hold, lease, mortgage, convey or otherwise deal with the same.

(b) The remedies provided by this section are not intended to be exclusive of any remedies available at law or in equity.

(c) Operator's rights to collect monies due and owing under this Declaration (as set forth herein and elsewhere in this Declaration) shall survive the termination of this Declaration.

12. **Term of Declaration.** Except as otherwise provided herein, each covenant contained herein and easement declared shall continue to exist for so long as a private or public sewage disposal system is fully installed and operational for all of the Lots comprising a part of the Property (including Parcel B). At such time as a replacement private or public sewage disposal system is fully operational for all of the Lots and Operator is entitled to cease operation of the Private Sewer System, as set forth in section 6(a) above, this Declaration shall automatically terminate and shall thereafter be of no further force and effect, except as to any remaining unpaid obligations owing hereunder and the obligations to indemnify set forth in Section 8 above.

13. **Miscellaneous.**

(a) This Declaration shall not dedicate the easements herein declared for the benefit of any person, persons, entity or entities not herein expressly made a beneficiary, and the rights and privileges created hereby are expressly denied to all strangers. Declarant further expressly disclaims the creation of any rights in or for the benefit of the general public.

(b) The easements herein declared are expressly made subject to all validly existing liens, easements, restrictions, covenants, conditions, rights-of-way and the encumbrances of record affecting the Property or any of the Lots comprising the Property.

(c) Each Owner agrees that it shall not use the easements for purposes other than as permitted herein and shall at all times comply with all safety rules and regulations promulgated by any governmental agencies having jurisdiction or authority over the easements.

(d) This Declaration and any conveyance or transfer by Declarant herein is expressly made without warranty, express or implied, except that Declarant warrants that it has fee simple title to the Disposal Field, that said title is not subject to any liens or encumbrances except (i) the lien for current ad valorem taxes, (ii) those which are subordinate to this Declaration, and (iii) exceptions which do not prohibit the use of the Disposal Field as contemplated in this Declaration.

(e) If any term, covenant or condition of this Declaration or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Declaration or the application of such terms, covenants or conditions to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Declaration shall be valid and be enforced to the fullest extent permitted by law.

(f) This Declaration shall be construed and enforced under the laws of the State of Alabama.

(g) In the event that dedication of an easement declared and granted hereunder is required to be made to any applicable governmental authority, then in any such event, such easement shall automatically terminate and the Declarant, Operator and/or the Owners hereby agree to execute a quitclaim deed or such other appropriate instrument reasonably necessary to evidence such termination, provided that (i) the service to be provided to the Owners hereunder is not limited or reduced in any manner, (ii) such easement is properly dedicated to the governmental authority subject to the terms and conditions of this Declaration, and (iii) except for such easement, in no event shall any Lot or portion thereof be required to be dedicated to any governmental entity.

(h) No failure or delay on the part of any Owner, Operator or Declarant in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall a single or partial exercise thereof provide any other or further privilege or the exercise of any other right, power or privilege.

(i) This Declaration shall at all times be subject to such rules and regulations as any applicable governing authority may, from time to time, implement in the exercise of its authority.

(j) No Owner may assign its rights under this Declaration without first obtaining Operator's written consent thereto, except that an Owner's rights hereunder may be assigned to any mortgagee holding a mortgage on an Owner's Lot without Operator's prior written consent.

(k) Except as provided below, the rights of Operator herein to collect the fees described in Section 4(a) above and to enforce the terms of this Declaration shall belong solely to Operator, it being intended that no Owner shall have a right against any other Owner to enforce any provision of this Declaration except as herein provided. Operator agrees that the failure of any Owner to pay any sum hereunder shall not be cause or excuse for failure to maintain or repair the Private Sewer System. If an Owner fails to comply with this Declaration and Operator brings legal action against such Owner, Operator, if it is the prevailing party in such action shall be entitled to recover its reasonable attorneys' fees and court costs. If Operator shall fail to enforce this Declaration against any Owner or any occupant of any Lot and such failure results in the Operator be unable to provide the sewer service which it is obligated to provide to any Owner, such Owner, after first giving Operator not less than five (5) business days prior written notice, may, by commencement of appropriate legal proceedings, seek to enforce the terms of this Declaration against Operator or any other Owner which is failing to comply with the terms of this Declaration. If during the five (5) business day notice period, Operator shall take appropriate actions against any defaulting Owner or occupant of a Lot (or commence to take and thereafter continue to diligently pursue taking the appropriate actions), no Owner shall have the right to enforce the terms of this Declaration against Operator or any other Owner.

(l) If an Owner institutes legal action to enforce this Declaration against Operator or another Owner and is the prevailing party in such action, then such Owner shall be entitled to recover its reasonable attorneys' fees and court costs incurred in connection with such action from the party or parties determined to be at fault.

(m) In no event shall any Owner be restricted from pursuing such remedies as are available under Alabama law against Operator for its failure to comply with its obligations under this Declaration.

(n) Unless otherwise expressly provided herein, all notices and other communications under this Declaration shall be in writing and shall be deemed given to the party to whom notice is to be given three (3) business days after any notice or other communication hereunder has been deposited in the United States mail, postage prepaid, or immediately upon receipt through personal hand delivery.

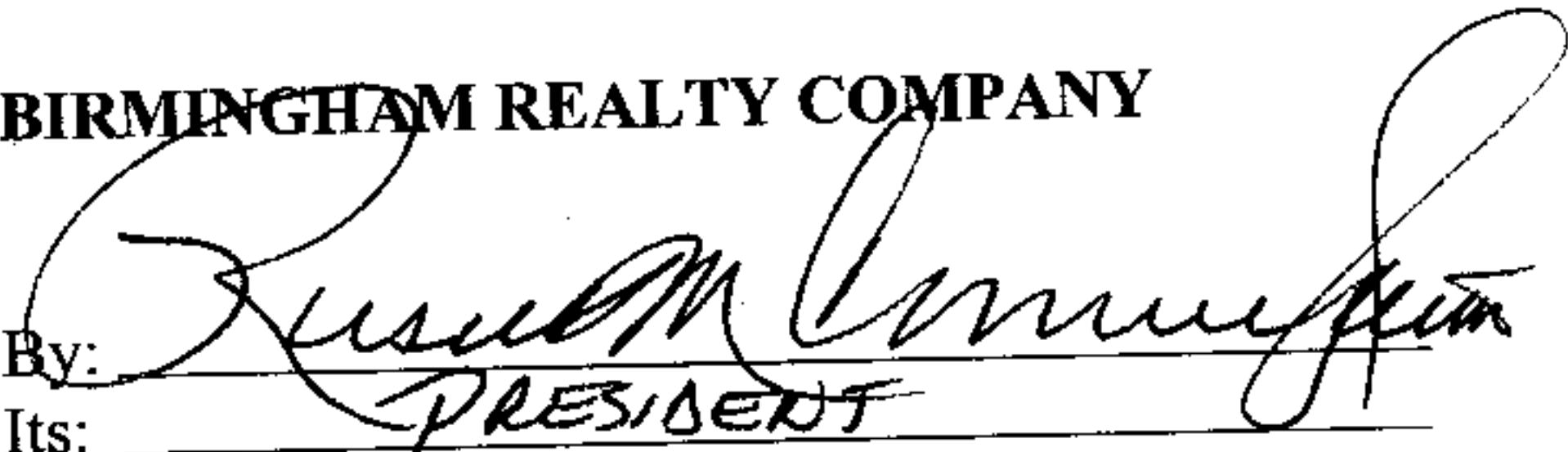
(o) Each Owner, for itself, its heirs, successors and assigns, agrees to release and forever discharge Declarant, its officers, directors, employees, independent contractors, successors and assigns, from any and all losses, claims, damages and expenses of every nature (including attorneys' fees) to which Declarant may be subject arising out of, or connected with, the performance by

Operator of its obligations under this Declaration, including any loss, claim, damage or expense arising out of the negligence of Owner or Owner's agents, invitees or licensees or arising out of a breach by Owner of any term or condition of this Declaration, except to the extent such loss, claim, damage, or expense is caused by the negligence or wilful misconduct of Declarant or its agents, employees, officers, directors or independent contractors.

IN WITNESS WHEREOF, Declarant and Operator have executed this Declaration on or as of the day and year first above written.

DECLARANT:

BIRMINGHAM REALTY COMPANY

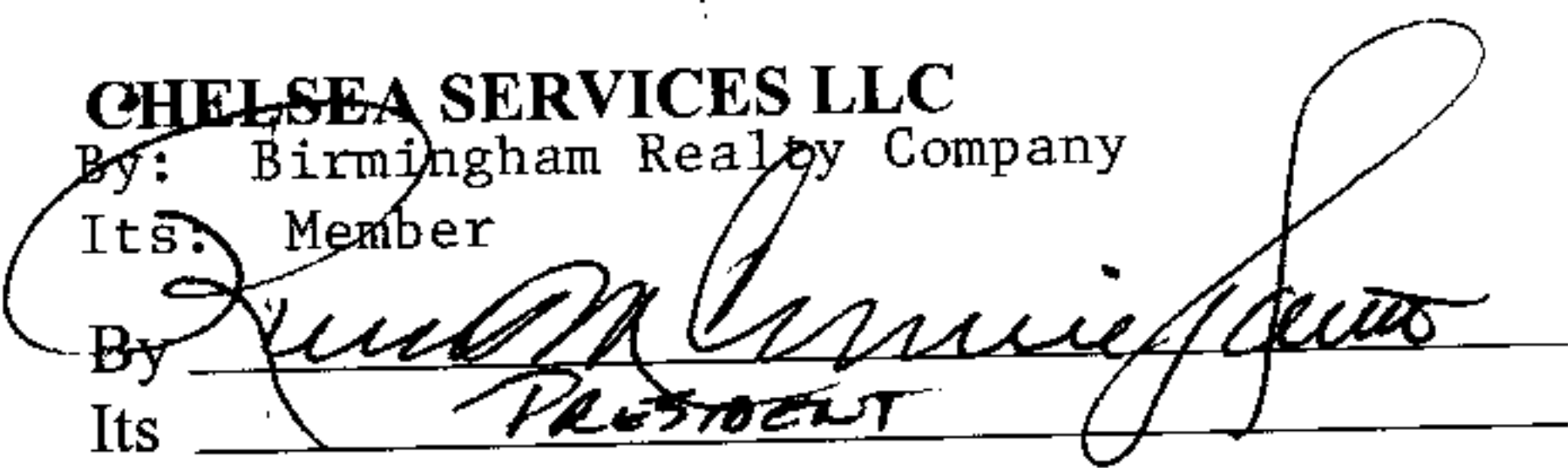
By: 
Its: PRESIDENT

OPERATOR:

CHELSEA SERVICES LLC

By: Birmingham Realty Company

Its: Member

By: 
Its: PRESIDENT

This instrument prepared by:
John E. Hagestration, Jr.
Bradley Arant Rose & White LLP
2001 Park Place, Suite 1400
Birmingham, AL 35203-2738

CONSENT AND AGREEMENT

Greensprings Associates, Inc., as the owner of Parcel B, hereby joins in the execution of this Declaration to subject such property to the terms and conditions of this Declaration and to agree to be bound by the terms of this Declaration. Greensprings shall be an "Owner" and Parcel B shall be a "Lot" and, when the context is appropriate, Parcel B shall be considered as part of the "Property."

As an inducement to Greensprings to subject Parcel B to the terms of the Declaration and in accordance with the terms of that certain Exchange Agreement dated July 8, 1997, between Greensprings and Declarant, Declarant and Operator do hereby agree with Greensprings as follows:

1. Operator agrees to allocate and preserve for Greensprings 1200 gallons per day of sewer service from the Private Sewer System. Further, to the extent Operator has additional capacity which has not been allocated to other Owners, Operator agrees that Greensprings shall be entitled to use the excess capacity until Operator allocates it to another Owner.
2. If all of the available capacity of the Private Sewer System has been allocated and Greensprings requires additional capacity, Operator agrees to construct a reasonable amount of additional capacity to serve Greensprings, provided Greensprings shall pay Operator (in advance, if requested) the full cost incurred by Operator (or expected to be incurred based upon bids obtained by Operator) in constructing the additional capacity for Greensprings. Operator shall only be obligated to construct such additional capacity to the extent that (i) it can obtain the appropriate licenses and permits to do so, and (ii) the Disposal Field is adequate to support the additional capacity or can be modified to do so without adding additional land area thereto. If other Owners also request additional capacity and such capacity can be added to the system upon the foregoing conditions, the total cost of constructing the increased capacity shall be allocated among the Owners requesting the increase in proportion to the amount of increased capacity which each Owner requests.
3. Greensprings shall not be required to pay any tap fees to Operator to connect to the Private Sewer System. Further, Operator agrees to bear all costs associated with connecting Greensprings existing septic tank to the Private Sewer System, other than the cost of installing any pump required as a part of such installation. Operator agrees to use its reasonable best efforts to prevent any interruption to Greensprings water or sewer service when connecting Greensprings to the Private Sewer System.
4. Operator agrees that Greensprings shall be permitted to sub-allocate its 1200 gallon per day capacity if it subdivides Parcel B. If this occurs, Greensprings shall bear all costs associated with reconfiguring or modifying its septic tank system and connecting its modified system to the Private Sewer System.
5. Greensprings existing toilets and plumbing fixtures are acceptable to Operator and Greensprings shall not be required to install water-saving or "low-consumption" devices in its existing facility.
6. Parcel B shall not be subject to the easement described in Section 4(b) of the Declaration, but shall be subject to right of entry established in Section 4(a) of the Declaration.
7. In order to exercise its rights under Section 6 of the Declaration to require Greensprings to connect to another private or public sewer system, Operator acknowledges and

agrees that (a) Parcel B must have reserved for its exclusive use an allocation of not less than 1,200 gallons per day by the operator of the replacement sewer system; (b) said connection must be in a connection point located on the rear (southerly) boundary line of Parcel B (the "Connection Point"); (c) the effluent discharged into the replacement sewer system at the Connection Point must flow from the Connection Point through any additional lines necessary to connect Parcel B to the replacement sewer system, in such manner that it shall not be necessary to install any additional or larger pumps to force the effluent into the system from the point of its discharge into the Connection Point; (d) Greensprings shall pay the expense of extending the line from the septic tank on Parcel B to the Connection Point to be located on the rear (southerly) boundary of Parcel B and the cost of installing a pump, if necessary, to bring the effluent to the point of discharge into the Connection Point, and Birmingham Realty shall pay all other costs necessary to connect Parcel B to said replacement sewer system; (e) Birmingham Realty shall grant such easements across property owned by Birmingham Realty for lines, pumps and other facilities as are necessary to connect Parcel B to such replacement sewer system; (f) Greensprings shall pay any reservation fees charged by the operator of said system for the connection of Parcel B to the system and shall pay the periodic fees for use of the system in accordance with the same billing schedule and rate applicable to all other users of said system, and Birmingham Realty shall pay any other fees and expenses necessary to connect Parcel B to such system or to reserve 1,200 gallons per day of capacity for Parcel B (the parties anticipate the reservation fee to be \$13.32 for each gallon per day reserved, or \$15,984.00 for the 1,200 gallons per day required by Greensprings; Greensprings shall be required to pay in excess of said per gallon amount only if and to the extent that Birmingham Realty is required to pay in excess of said per gallon amount for its reservation).

8. In the event of a condemnation as contemplated by Section 10 of the Declaration, Operator agrees that in no event shall any award with respect to the taking of Parcel B or portion thereof be reduced by any claim made by Operator with respect to the Private Sewer System.

9. Without the necessity of first obtaining Operator's consent, Greensprings may transfer its rights under the Declaration to any future owner of Parcel B or any portion thereof. In the event of the sale of a portion of parcel B, Greensprings shall retain its rights under the Declaration with respect to the portion of Parcel B retained by Greensprings.

10. Without regard to any price increase that Operator may implement with respect to other Owners under Section 5(a) of the Declaration, the fees and charges payable by Greensprings to Operator shall not exceed the fees and charges established from time-to-time by Shelby County, Alabama for providing sewer service.

11. Parcel B shall not be subject to the lien described in Section 11(a) of the Declaration. If Greensprings shall fail to pay any sums owing to Operator under the Declaration, Operator shall have the right to commence legal action against Greensprings for the collection of any such amount, which shall include attorneys' fees and other costs of collection if Operator is the prevailing party.

12. To the extent any term set forth in this Consent and Agreement is inconsistent with the Declaration, the terms set forth herein shall prevail, but solely with respect to Greensprings and not with respect to any other Owner.

IN WITNESS WHEREOF, Declarant, Operator and Greensprings have executed this Consent and Agreement on or as of the day and year first above written.

DECLARANT:

BIRMINGHAM REALTY COMPANY

By: 

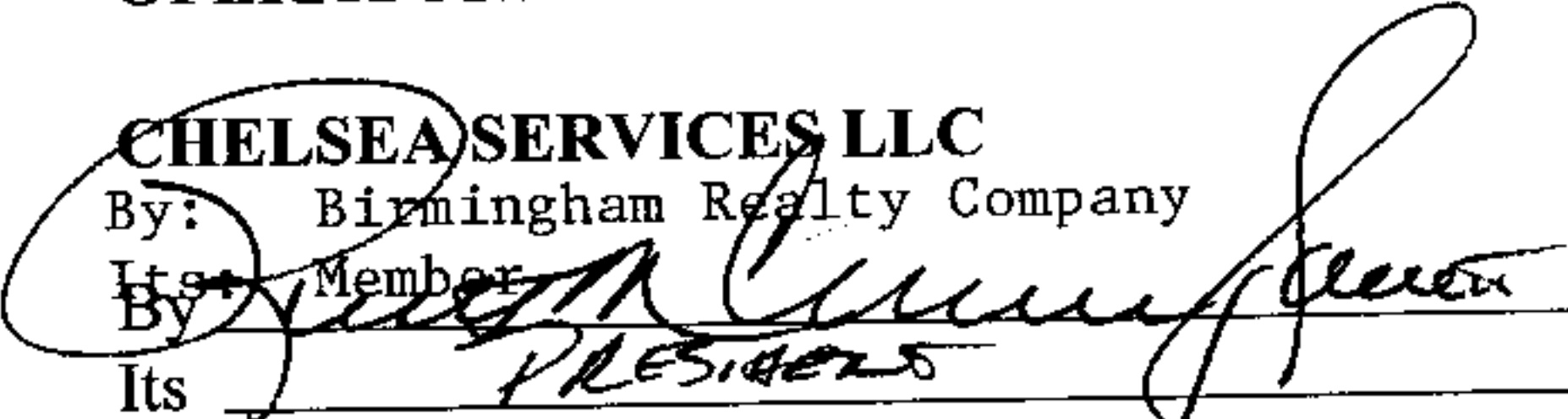
Its: PRESIDENT

OPERATOR:

CHELSEA SERVICES LLC

By: Birmingham Realty Company

Its: Member

By: 

Its: PRESIDENT

GREENSPRINGS:

GREENSPRINGS ASSOCIATES, INC.

By: 

Its: Vice - President

STATE OF ALABAMA

)

JEFFERSON COUNTY

:

)

I, the undersigned, a notary public in and for said county in said state, hereby certify that Russell M. Cunningham III, whose name as President of Birmingham Realty Company, an Alabama 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 said 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 19th day of August, 1998.

John E. Hagler

Notary Public

[NOTARIAL SEAL]

My commission expires: 9-19-98

STATE OF ALABAMA

)

JEFFERSON COUNTY

:

)

I, the undersigned, a notary public in and for said county in said state, hereby certify that Russell Cunningham, III, whose name as President of Birmingham Realty Company, an Alabama corporation, whose name as a member of Chelsea Services LLC, 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, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation acting in its capacity as such member.

Given under my hand and official seal this 19th day of August, 1998.

John E. Hagler

Notary Public

[NOTARIAL SEAL]

My commission expires: 9-19-98

STATE OF ALABAMA

JEFFERSON COUNTY

I, the undersigned, a notary public in and for said county in said state, hereby certify that E. J. Marino, Jr., whose name as Vice President of Greensprings Associates, Inc., am Alabama 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 said 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 20th day of August, 1998.

Edne Carow

Notary Public

[NOTARIAL SEAL]

My commission expires: 5/16/2002

EXHIBIT A

DESCRIPTION OF PROPERTY

CHELSEA CORNERS

Parcel I (Instrument #1996/11737)

A parcel of land situated in the East 1/2 of the S.W. 1/4 and the West 1/2 of the S.E. 1/4 of Section 27, Township 19 South, Range 1 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Southwest corner of the S.E. 1/4 of the S.W. 1/4 of Section 27, Township 19 South, Range 1 West, Shelby County, Alabama and run North along the West line of said 1/4-1/4 section a distance of 1048.33 feet to a point; thence $66^{\circ}52'40''$ to the right in a Northeasterly direction a distance of 210.13 feet to a point; thence $16^{\circ}06'07''$ to the right in a Northeasterly direction a distance of 109.35 feet to a point; thence $18^{\circ}54'05''$ to the left in a Northeasterly direction a distance of 117.455 feet to a point; thence $67^{\circ}45'50''$ to the right in a Southeasterly direction a distance of 20.00 feet to a point; thence $90^{\circ}00'$ to the left in a Northeasterly direction a distance of 568.7775 feet to a point; thence $90^{\circ}26'05''$ to the right in a Southeasterly direction a distance of 38.22 feet to a point; thence $90^{\circ}00'$ to the left in a Northeasterly direction a distance of 104.94 feet to a point; thence $89^{\circ}00'15''$ to the right in a Southeasterly direction a distance of 97.095 feet to the POINT OF BEGINNING; thence continue along the last stated course a distance of 154.31 feet to a point; thence $89^{\circ}59'35''$ to the left in a Northeasterly direction a distance of 490.77 feet to a point on the Southeasterly right-of-way line of U.S. Highway #280; thence $39^{\circ}04'58''$ to the right in a Northeasterly direction along said highway right-of-way a distance of 59.66 feet to a point; thence $89^{\circ}51'10''$ to the right in a Southeasterly direction a distance of 768.13 feet to a point; thence $90^{\circ}00'$ to the right in a ~~North~~ westerly direction a distance of 411.32 feet to a point; thence $90^{\circ}00'$ to the right in a Southwesterly direction a distance of 105.00 feet to the P.C. (point of curve) of a curve to the left having a radius of 20.00 feet and a central angle of $90^{\circ}00'$; thence Northwesterly, Westerly and Southwesterly direction along the arc of said curve a distance of 31.42 feet to the P.T. (point of tangent) of said curve; thence in the tangent to said curve in a Southwesterly direction a distance of 285.11 feet to a point; thence $98^{\circ}39'02''$ to the right in a Northerly direction a distance of 31.79 feet to the P.C. (point of curve) of a curve to the right having a radius of 960.00 feet and a central angle of $24^{\circ}24'46''$; thence Northerly and Northeasterly along the arc of said curve a distance of 409.04 feet to the P.T. (point of tangent) of said curve; thence in the tangent to said curve a distance of 52.62 feet to the POINT OF BEGINNING.

Parcel II (Instrument #1996/11737)

A parcel of land situated in the East 1/2 of the S.W. 1/4 and the West 1/2 of the S.E. 1/4 of Section 27, Township 19 South, Range 1 West, Shelby County, Alabama, being more particularly described as follows:

Begin at the Southwest corner of the S.E. 1/4 of the S.W. 1/4 of Section 27, Township 19 South, Range 1 West, Shelby County, Alabama and run North along the West line of said 1/4-1/4 section a distance of 516.3176 feet to the POINT OF BEGINNING; thence continue on the last described course a distance of 531.5619 feet to a point; thence $66^{\circ}52'40''$ to the right in a Northeasterly direction a distance of 210.13 feet to a point; thence $16^{\circ}06'07''$ to the right in a Northeasterly direction a distance of 109.35 feet to a point; thence $18^{\circ}54'05''$ to the left in a Northeasterly direction a distance of 117.455 feet to a point; thence $67^{\circ}45'50''$ to the right in a Southeasterly direction a distance of 20.00 feet to a point; thence $90^{\circ}00'$ to the left in a Northeasterly direction a distance of 568.7775 feet to a point; thence $90^{\circ}26'05''$ to the right in a Southeasterly direction a distance of 38.22 feet to a point; thence $90^{\circ}00'$ to the left in a Northeasterly direction a distance of 104.94 feet to a point; thence $89^{\circ}00'15''$ to the right in a Southeasterly direction a distance of 97.095 feet to a point; thence $72^{\circ}00'20''$ to the right in a Southwesterly direction a distance of 52.62 feet to the P.C. (point of curve) of a curve to the left having a radius of 960.00 feet and a central angle of $24^{\circ}24'46''$; thence Southwesterly and Southerly along the arc of said curve a distance of 409.04 feet to the P.T. (point of tangent) of said curve; thence in the tangent to said curve a distance of 31.79 feet to a point; thence $98^{\circ}39'02''$ to the left in a Northeasterly direction a distance of 285.11 feet to the P.C. (point of curve) of a curve to the right having a radius of 20.00 feet and a central angle of $90^{\circ}00'$; thence in a Northeasterly, Easterly and Southeasterly direction along the arc of said curve a distance of 31.42 feet to the P.T. (point of tangent) of said curve; thence in the tangent to said curve a distance of 105.00 feet to a point; thence $90^{\circ}00'$ to the left in a Northeasterly direction a distance of 411.32 feet to a point; thence $90^{\circ}00'$ to the right in a Southeasterly direction a distance of 236.13 feet to a point on the Northwestern right-of-way line of Shelby County Road #47; thence $60^{\circ}59'27''$ to the right in a Southwesterly direction along the said right-of-way line a distance of 721.50 feet to a point; thence $2^{\circ}38'35''$ to the left in a Southwesterly direction along said right-of-way line a distance of 54.45 feet to a point; thence $6^{\circ}41'09''$ to the left in a Southwesterly direction along said right-of-way line a distance of 57.51 feet to a point; thence $8^{\circ}00'57''$ to the left in a Southwesterly direction along said right-of-way line a distance of 57.21 feet to a point; thence $9^{\circ}18'56''$ to the left in a Southwesterly direction along said right-of-way line a distance of 59.94 feet to a point; thence $8^{\circ}26'08''$ to the left in a Southwesterly direction along said right-of-way line a distance of 57.34 feet to a point; thence $8^{\circ}36'58''$ to the left in a Southerly direction along said right-of-way line a distance of 57.285 feet to a point; thence $9^{\circ}17'$ to the left in a Southerly direction along said right-of-way line a distance of 56.14 feet to a point; thence $7^{\circ}55'39''$ to the left in a Southerly direction along said right-of-way line a distance of 61.38 feet to a point on the South line of Section 27, Township 19 South, Range 1 West; thence $98^{\circ}35'$ to the right in a Westerly direction a distance of 340.5889 feet to a point on the Easterly right-of-way line of the Seaboard Coastline Railroad; thence $41^{\circ}30'$ to the right in a Northwesternly direction along said railroad right-of-way line a distance of 778.9436 feet to the POINT OF BEGINNING.

Parcel III (Instrument #1997/20433)

A part of the N.E. 1/4 of S.W. 1/4 and a part of the S.E. 1/4 of the S.W. 1/4 of Section 27, Township 19 South, Range 1 West, more particularly described as follows: Begin at the intersection of the South right-of-way line of the new 4 lane Florida Short Route Highway and the West line of the Old Harpersville dirt road in the N.E. 1/4 of S.W. 1/4 of Section 27, Township 19 South, Range 1 West and run in a Westerly direction along the South right-of-way line of the new 4 lane Florida Short Route Highway to its intersection with the West line of the N.E. 1/4 of S.W. 1/4 of said Section 27, which is known as the East line of Nivens property; thence run in a Southerly direction along the West line of E. 1/2 of the S.W. 1/4 of said Section 27, to its intersection with the Westerly line of said Old Harpersville dirt road; thence in a Northeasterly direction along the Westerly line of said Old Harpersville dirt road to the POINT OF BEGINNING, begin situated in Shelby County, Alabama.

A portion of the above described property is also known as Lot 2, according to plat of Chesser Survey, a commercial subdivision, as recorded in Map Book 10, Page 1 in the Probate Office of Shelby County, Alabama.

LESS AND EXCEPT, Lot 1, according to the plat of Chesser Survey, a commercial subdivision, as recorded in Map Book 10, Page 1 in the Probate Office of Shelby County, Alabama, being situated in Shelby County, Alabama.

Parcel IV (Parcel being acquired from Greensprings Associates, Inc.)

A parcel of land situated in the N.E. 1/4 of the S.W. 1/4 of Section 27, Township 19 South, Range 1 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Southwest corner of the S.E. 1/4 of the S.W. 1/4 of Section 27, Township 19 South, Range 1 West, Shelby County, Alabama and run in a Northerly direction along the West line of said 1/4-1/4 section a distance of 1048.33 feet to a point; thence 66°52'40" to the right in a Northeasterly direction a distance of 210.13 feet to a point; thence 16°06'07" to the right in a Northeasterly direction a distance of 109.35 feet to a point; thence 18°54'05" to the left in a Northeasterly direction a distance of 117.46 feet to a point; thence 67°45'50" to the right in a Southeasterly direction a distance of 20.00 feet to a point; thence 90°00' to the left in a Northeasterly direction a distance of 568.78 feet to a point on the Southerly right-of-way line of U.S. Highway #280; thence 90°26'05" to the right in a Southeasterly direction a distance of 38.32 feet along said right-of-way line to a point; thence 90°00' to the left in a Northeasterly direction a distance of 104.94 feet along said right-of-way line to the POINT OF BEGINNING; thence continue along the last described course a distance of 105.06 feet to a point; thence 24°53' to the right in a Northeasterly direction a distance of 151.47 feet along said right-of-way line to a point; thence 103°34'46" to the right in a Southeasterly direction a distance of 153.75 feet to a point; thence 90°00' to the left in a Northeasterly direction a distance of 108.85 feet to a point; thence 141°18'02" to the right in a Southwesterly direction a distance of 231.03 feet to a point; thence 90°00'04" to the right in a Northwesterly direction a distance of 252.79 feet to the POINT OF BEGINNING.

Containing 47,315.85 square feet or 1.09 acres.

EXHIBIT B

DESCRIPTION OF GREENSPRINGS PROPERTY

A parcel of land situated in the N.E.1/4 of the S.W.1/4 and the N.W.1/4 of the S.E.1/4 of Section 27, Township 19 South, Range 1 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Southwest corner of the S.E.1/4 of the S.W.1/4 of Section 27, Township 19 South, Range 1 West, Shelby County, Alabama and run in a Northerly direction along the West line of said 1/4-1/4 section a distance of 1048.33 feet to a point; thence 66°52'40" to the right in a Northeasterly direction a distance of 210.13 feet to a point; thence 16°06'07" to the right in a Northeasterly direction a distance of 109.35 feet to a point; thence 18°54'05" to the left in a Northeasterly direction a distance of 117.46 feet to a point; thence 67°45'50" to the right in a Southeasterly direction a distance of 20.00 feet to a point; thence 90°00' to the left in a Northeasterly direction a distance of 568.78 feet to a point on the Southerly right-of-way line of U.S. Highway #280; thence 90°26'05" to the right in a Southeasterly direction a distance of 38.32 feet along said right-of-way line to a point; thence 90°00' to the left in a Northeasterly direction a distance of 210.00 feet along said right-of-way line to a point; thence 24°53' to the right in a Northeasterly direction a distance of 151.47 feet along said right-of-way line to the POINT OF BEGINNING; thence continue along the last described course and along the Southerly right-of-way line of U.S. Highway #280 a distance of 44.48 feet to a point; thence 13°57'46" to the right in a Northeasterly direction along said right-of-way line a distance of 268.33 feet to a point; thence 140°55'02" to the right (leaving said right-of-way line) in a Southwesterly direction a distance of 259.74 feet to a point; thence 38°41'58" to the right in a Southwesterly direction a distance of 108.85 feet to a point; thence 90°00' to the right in a Northwesterly direction a distance of 153.75 feet to the POINT OF BEGINNING.

Containing 34,229.89 square feet or 0.7858 acres.

desc848

Parcel V (Parcel being transferred to Greensprings Associates, Inc.)

A parcel of land situated in the N.E. 1/4 of the S.W. 1/4 of Section 27, Township 19 South, Range 1 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Southwest corner of the S.E. 1/4 of the S.W. 1/4 of Section 27, Township 19 South, Range 1 West, Shelby County, Alabama and run in a Northerly direction along the West line of said 1/4-1/4 section a distance of 1048.33 feet to a point; thence $66^{\circ}52'40''$ to the right in a Northeasterly direction a distance of 210.13 feet to a point; thence $16^{\circ}06'07''$ to the right in a Northeasterly direction a distance of 109.35 feet to a point; thence $18^{\circ}54'05''$ to the left in a Northeasterly direction a distance of 117.46 feet to a point; thence $67^{\circ}45'50''$ to the right in a Southeasterly direction a distance of 20.00 feet to a point; thence $90^{\circ}00'$ to the left in a Northeasterly direction a distance of 568.78 feet to a point on the Southerly right-of-way line of U.S. Highway #280; thence $90^{\circ}26'05''$ to the right in a Southeasterly direction a distance of 38.32 feet along said right-of-way line to a point; thence $90^{\circ}00'$ to the left in a Northeasterly direction a distance of 210.00 feet along said right-of-way line to a point; thence $24^{\circ}53'$ to the right in a Northeasterly direction a distance of 151.47 feet along said right-of-way line to a point; thence $103^{\circ}34'46''$ to the right in a Southeasterly direction a distance of 153.75 feet to a point; thence $90^{\circ}00'$ to the left in a Northeasterly direction a distance of 108.85 feet to the POINT OF BEGINNING; thence $38^{\circ}41'58''$ to the left in a Northeasterly direction a distance of 101.53 feet to a point; thence $128^{\circ}41'58''$ to the right in a Southeasterly direction a distance of 63.48 feet to a point; thence $90^{\circ}00'$ to the right in a Southwesterly direction a distance of 79.24 feet to the POINT OF BEGINNING.

Containing 2,515.08 square feet or 0.06 acre.

desc844

EXHIBIT C

DESCRIPTION OF FIELD LINE AREA

Sewage Disposal Easement

A parcel of land situated in the Southeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 27, Township 19 South, Range 1 West, Shelby County, Alabama, and being more particularly described as follows:

Commence at the Southwest corner of the Southeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 27, Township 19 South, Range 1 West and run North along the West line of said $\frac{1}{4}$ - $\frac{1}{4}$ section a distance of 604.94 feet to the POINT OF BEGINNING; thence continue North along said $\frac{1}{4}$ - $\frac{1}{4}$ section line a distance of 443.39 feet to a point; thence $66^{\circ}52'40''$ to the right in a Northeasterly direction a distance of 210.13 feet to a point; thence $16^{\circ}06'07''$ to the right in a Northeasterly direction a distance of 109.35 feet to a point; thence $76^{\circ}16'50''$ to the right in a Southeasterly direction a distance of 172.38 feet to a point; thence $33^{\circ}16'42''$ to the right in a Southwesterly direction a distance of 126.84 feet to a point; thence $18^{\circ}57'17''$ to the left in a Southeasterly direction a distance of 102.67 feet to a point; thence $40^{\circ}40'32''$ to the right in a Southwesterly direction a distance of 99.87 feet to a point; thence $42^{\circ}15'16''$ to the right in a Southwesterly direction a distance of 298.78 feet to the POINT OF BEGINNING.

Contains 3.5979 acres.

ledel60

TOGETHER WITH an easement for the installation and maintenance of lines, pumps, and other related facilities, fifteen feet in width, across the Property, which will connect Parcel B to the Disposal Field, the exact location of which shall be determined by Declarant in its sole discretion. Declarant may modify the description of this easement to more specifically locate the easement by executing an amendment to the Declaration. Said amendment shall be effective upon its execution by Declarant and its recordation in the Office of the Judge of Probate of Shelby County, Alabama. A copy of the recorded amendment shall be delivered by Declarant to Greensprings promptly upon the recordation thereof.

EXHIBIT D

This instrument prepared by:
John E. Hagefstration, Jr.
Bradley Arant Rose & White LLP
2001 Park Place, Suite 1400
Birmingham, AL 35203-2738

SEWER CAPACITY RESTRICTION AND AGREEMENT

THIS SEWER CAPACITY RESTRICTION AND AGREEMENT ("Restriction and Agreement") is made and entered into as of the _____ day of _____, 1998, by and among **BIRMINGHAM REALTY COMPANY**, an Alabama corporation ("Seller"); _____, a _____ ("Purchaser"); and **CHELSEA SERVICES LLC**, an Alabama limited liability company ("Operator").

RECITALS:

A. Simultaneously with the execution and delivery of this Restriction and Agreement, Seller is selling to Purchaser, and Purchaser is purchasing from Seller, certain real property located in Shelby County, Alabama (the "Property"), pursuant to a contract dated as of _____, 19____, by and between Seller and Purchaser (the "Sale Agreement"). The Property is more particularly described on Exhibit A attached hereto and incorporated herein by reference.

B. Operator is the sole provider of off-site sewage treatment and disposal services ("Sewer Services") to the Property.

C. Seller, Purchaser and Operator desire to restrict the Property as to the maximum amount of Sewer Services capacity to be provided by Operator to the Property.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and the sum of One Dollar (\$1.00) in hand paid to each of the parties by the other parties hereto, the receipt and sufficiency of which is hereby acknowledged, Seller, Purchaser and Operator agree as follows:

1. Purchaser will cause any improvements constructed on the Property to be connected to the off-site sewage treatment and disposal system owned and operated by Operator, subject to Operator's tap fees and monthly service charges which are generally consistent with such fees and charges being charged by Operator to other of its sewer customers whose land use and operations are similar to those of Purchaser and which monthly service charges are subject to change from time to time.

2. The maximum amount of Sewer Services capacity to be provided by Operator to the Property is _____ () gallons per day (gpd) (the "Maximum Capacity"). Purchaser will control development of and on the Property to limit its requirement for Sewer Services capacity to the Maximum Capacity. Notwithstanding the Maximum Capacity, the parties acknowledge and agree that an amount of Sewer Services less than the Maximum Capacity may be required for development and use of the Property, subject to current applicable governmental regulations. In such event, Operator will charge Purchaser for only the amount of Sewer Service capacity required, and not for the entire Maximum Capacity.

3. Purchaser will cause to be installed in any improvements constructed on the Property all water-conserving fixtures reasonably obtainable, including low-volume water closets.

4. This Restriction and Agreement shall run with the land and be binding upon, and inure to the benefit of, all successors and assigns of Seller, Purchaser and Operator.

IN WITNESS WHEREOF, Seller, Purchaser and Operator have caused this Restriction and Agreement to be executed by their respective authorized officers and members, as of the date first above written.

SELLER:

BIRMINGHAM REALTY COMPANY

By: _____
Its: _____

PURCHASER:

By: _____
Its: _____

OPERATOR:

CHELSEA SERVICES LLC

By: _____
Its: _____

EXHIBIT A

[INSERT LEGAL DESCRIPTION PROPERTY]

EXHIBIT E

This instrument prepared by:
John E. Hagefstration, Jr.
Bradley Arant Rose & White LLP
2001 Park Place, Suite 1400
Birmingham, AL 35203-2708

STATE OF ALABAMA)

COUNTY OF SHELBY)

SEWER EASEMENT

KNOW ALL MEN BY THESE PRESENTS: That for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, _____, a _____ (hereinafter referred to as "Grantor") does hereby grant, bargain, sell and convey unto **CHELSEA SERVICES LLC**, an Alabama limited liability company (hereinafter referred to as "Grantee"), its successors and assigns, from the date hereof, a perpetual right of way and easement being _____ (____) feet in width in, under, through and upon certain real estate situated in Shelby County, Alabama, as more particularly described and depicted on Exhibit "A" attached hereto and incorporated herein by reference, for the purposes of presently and from time to time in the future as Grantee may elect, constructing, erecting, setting, installing, renewing, repairing, maintaining, operating, or changing the size of sanitary sewer pipes, pumps, appurtenances, appliances, fixtures and equipment, whether above or beneath the surface of the ground, for Grantee's use in providing sewage disposal services to Grantor's property (the "Sewer Utilities").

Grantor does hereby further grant, bargain, sell and convey unto Grantee all other rights and privileges necessary or convenient for the full enjoyment and use of the rights and easements herein granted, for all the purposes above stated, including but not limited to the free right of ingress and egress over the property described in attached Exhibit "A", for the purposes above stated, and the right, from time to time, in connection with the enjoyment of the privileges herein conveyed, to cut and keep clear all trees, brush, undergrowth and other obstructions, wherever located upon such property, to the extent necessary to permit the full enjoyment of the rights and privileges herein conveyed.

The rights herein granted are made subject to Grantee's full compliance with the Declaration of Easements and Restrictions recorded in the Probate Office of Shelby County, Alabama, as Instrument _____, as the same may be amended from time to time, and all applicable governmental rules, regulations and laws, in connection with Grantee's use of the easements and rights of way herein granted and the installation or construction of the Sewer Utilities, all as herein provided.

IN WITNESS WHEREOF, Grantor has caused this conveyance to be executed on this the
day of _____, 1998.

By: _____
Its: _____

COUNTY OF

Given under my hand and official seal this _____ day of _____, 19__.

Notary Public

My commission expires: _____

EXHIBIT "A"

[INSERT DESCRIPTION OF EASEMENT]

Inst # 1998-33437

08/26/1998-33437
04:27 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
026 CRH 77.00