

1900  
RESTRICTIVE COVENANTS and  
GRANT OF LAND EASEMENT for  
Underground facilities in Subdivision

WE Number: 61700-08-0068-6-01

PARCEL Number: \_\_\_\_\_

THIS PERMIT COVERS ALL COMPANY FACILITIES  
LOCATED ALONG THE ROUTE SHOWN  
ON THE ATTACHED DRAWING WITHIN  
THE SUBDIVISION IDENTIFIED HEREIN.

STATE OF ALABAMA )

County of Shelby )

KNOW ALL MEN BY THESE PRESENTS, THAT: WHEREAS, the "Grantor", (whether one or more) are owners of record of the following described real estate in Shelby County, Alabama, to wit: Summer Brook Sector 5-Phase VI (the "Subdivision") as shown on the plat recorded in Map Book 21, page 107, in the Office of the Judge of Probate of Shelby County, Alabama (the "Property") and, SE 1/4, SEC. 05, T21S, R3W

WHEREAS, the said Grantor is desirous of granting Alabama Power Company, (the Company) an easement for underground electrical facilities and of establishing or placing the heretofore described subdivision under certain restrictive covenants to insure the use of the property for attractive residential purposes and thereby to secure to each lot owner the same advantages insured to other lot owners.

NOW, THEREFORE, The Grantor, for and in consideration of One and No/100 Dollars (\$1.00), and other good and valuable consideration, to Grantor in hand paid by the Company, the receipt of which is hereby acknowledged, does hereby grant to Company, its successors and assigns, the right to construct, install, operate, maintain and replace, and the right to permit other corporations and persons to construct, install, operate, maintain and replace, along a route to be selected by the Company, (generally shown hatched on the attached drawing) its successors or assigns, all conduits, cables, trans closures and other appliances and facilities (above ground and below ground) useful or necessary in connection therewith, for the underground transmission and distribution of electric power and for underground communication service upon, under and across the Property.

Together with all the rights and privileges necessary or convenient for the full enjoyment or use thereof, including the right of ingress and egress to and from said facilities and the right to excavate for installation, replacement, repair and removal thereof; and also the right to cut and keep clear any and all obstructions or obstacles of whatever character on, under and above said facilities.

TO HAVE AND TO HOLD such easement to the Company, its successors and assigns, forever.

And, the undersigned Grantors further does hereby adopt the following conditions, restrictions, covenants and limitations which shall apply in their entirety to all lots in the said Subdivision and shall run with the title to said property, and which shall be included in any conveyance of title to any or all of said lots in said subdivision:

1. The owners of lots within the Subdivision will not erect or grant to any person, firm or corporation the right, license or privilege to erect or use or permit the use of overhead wires, poles or overhead facilities of any kind for electrical, telephone, or cable television service on said real estate (except such poles and overhead facilities as may be required at those places where distribution facilities enter and leave said subdivision, or existing and/or future overhead transmission or communication facilities on existing Alabama Power Company rights of way). Nothing herein shall be construed to prohibit overhead street lighting, or ornamental yard lighting, where serviced by underground wires or cables.

2. In order to beautify said Subdivision for the benefit of all lot owners and permit Alabama Power Company to install underground electric service to each house in said Subdivision for the mutual benefit of all lot owners therein, no owner of any lot within said Subdivision will commence construction of any house on any lot until such owner (1) notifies Alabama Power Company that such construction is proposed, (2) grants in writing to Alabama Power Company such rights and easements as Alabama Power Company deems necessary in connection with its construction, operation, maintenance, replacement and removal of underground service laterals of each lot, and (3) otherwise complies with the Rules and Regulations for Underground Residential Distribution on file with and approved by the Alabama Public Service Commission. Further, no plants, shrubs, fences, walls or other obstructions shall be placed in front of or within three (3) feet of any side of any pad-mounted equipment and Alabama Power Company shall not be liable for any damages to or destruction of any shrubs, trees, flowers, grass or other plants caused by the equipment or employees of the Company or its contractors engaged in the construction, operation, maintenance, replacement or removal of the Company's facilities. Appropriate meter locations must be obtained from Alabama Power Company prior to installing or relocating service entrance facilities and associated internal wiring. Owners must install meter sockets provided by Alabama Power Company to the Company's specifications and provide and install two (2) inch (for 200 amp) or three (3) inch (for 400 amp) schedule 40 PVC or equivalent galvanized conduit from the meter socket to two (2) feet below finished grade.

3. Alabama Power Company, its successors and assigns, will retain title to all underground facilities installed by the Company or its contractors, including but not limited to the service lateral and outdoor metering socket serving each said house, and said service entrance facilities provided by Alabama Power Company will not in any way be considered a fixture or fixtures and thereby a part of said real estate, but will remain personal property belonging to Alabama Power Company, its successors and assigns, and will be subject to removal by Alabama Power Company, its successors and assigns, in accordance with applicable Rules and Regulations filed with and approved by the Alabama Public Service Commission.

4. These covenants and restrictions touch and concern and benefit the land and shall run with the land and shall be binding on Alabama Power Company, the undersigned, their respective heirs, successors and assigns. Invalidity of any one of the foregoing covenants and restrictions shall in no way affect any other provision contained herein.

Inst # 1999-12055

03/23/1999-12055

09:54 AM CERTIFIED

SHELBY COUNTY JUDGE OF PROBATE

005 CRH 19.00

IN WITNESS WHEREOF, this instrument has been executed this day 30<sup>th</sup> of July, 1997

GRANTOR:

Witness/Attest:

[Signature]

Summer Brook Partnership  
Name of Individual/Company/Partnership  
[Signature]  
Signature of Individual/Officer/Partner

Note: This agreement to be recorded in the Office of the Judge of Probate in the county as indicated above.

**CORPORATE/PARTNERSHIP ACKNOWLEDGMENT**

STATE OF ALABAMA )

County of \_\_\_\_\_ )

I, Cheryl R. Abbott, a Notary Public, in and for said County in said State, hereby  
certify that Donald R. Stutton whose name as Executive Vice President  
of Summer Brook Partnership a corporation/partnership, is signed to the  
foregoing instrument, and who is known to me, acknowledged before me on this day that being informed of the contents of the instrument, he, as such  
officer/partner and with full authority, executed the same voluntarily for and as the act of said corporation/partnership.

Given under my hand and official seal, this the 30 day of July, 1997

Cheryl R. Abbott  
Notary Public

My commission expires: 1-26-99

**INDIVIDUAL ACKNOWLEDGMENT**

STATE OF ALABAMA )

County of \_\_\_\_\_ )

I, \_\_\_\_\_, a Notary Public in and for said County, in said State,  
hereby certify that \_\_\_\_\_, whose name (s) (is/are) signed to the  
foregoing instrument, and who (is/are) known to me, acknowledged before me on this date that, being informed of the contents of the agreement,  
(has/have) executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_

\_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_

**THIS INSTRUMENT PREPARED BY:**

Don D. Bailey

Alabama Power Company  
Corporate Real Estate  
P. O. Box 2641  
Birmingham, AL 35291-1980

**DO NOT RECORD WITHOUT ATTACHED DRAWING!**

# Agreement For Underground Residential Distribution In Subdivisions

STATE OF ALABAMA )

Shelby County )

THIS AGREEMENT made and entered into this the 30<sup>th</sup> day of July, 19 97, by and between Alabama Power Company, a corporation (hereinafter referred to as "Company"), and Summer Brook Partnership

(hereinafter referred to as "Developer"), the Developer of Summer Brook Sector 5-Phase VI Subdivision; consisting of 36 lots.

## WITNESSETH:

WHEREAS, Developer is the owner of the hereinafter described subdivision and is desirous of obtaining electric utility service by means of Company's underground distribution facilities for homes to be constructed on all lots to be developed within said subdivision; and,

WHEREAS, the underground distribution system required to serve homes on all lots within said subdivision will include underground cables, surface transformers, underground service laterals and outdoor metering troughs; and,

WHEREAS, Company is willing to provide electric service by means of an underground distribution system provided Developer complies with the terms and conditions hereinafter set forth; and

WHEREAS, Company has received and accepted : { Circle (A) or (B) whichever is applicable }

A. Two copies of a plat approved by appropriate governmental authority subdividing Developer's real estate into lots and designating street names and a number for each lot, dedicated easement with layouts for all utilities, sewers and drainage, minimum building set-back dimensions, and proposed building lines, which

said plat is recorded in Map Book \_\_\_\_\_, Page \_\_\_\_\_, in the office of the Judge of Probate of Shelby County, Alabama, a copy of which, as recorded, has been furnished to the Company to be retained in its files as an exhibit to this agreement;

B. (To be utilized only when governmental requirements preclude the use of option A.) Two copies of a plat for which preliminary approval has been received from appropriate governmental authority for the subdivision of Developer's real estate into lots and designating block numbers, street names and a number for each lot, dedicated easements with layouts for all utilities, sewers and drainage, minimum building set-back dimensions, and proposed building lines, which said plat is attached hereto

and for which the plat of said subdivision which is finally approved and recorded in Map Book \_\_\_\_\_, Page \_\_\_\_\_, in the office of the Judge of Probate of

\_\_\_\_\_ County, Alabama, will be substituted therefor. The recorded plat will be supplied subsequent to the date of this Agreement. In the event the subdivision plat recorded subsequent to the date hereof contains changes from the preliminary plat attached hereto which require changes in the electric system, the Developer shall pay for any increases in the cost of the required installation. Such payment shall be made within ten days after the effect of such change has been determined, or if no payment has been made by Developer, such payment shall be reflected in the notice to Developer that payment is due; and

WHEREAS, Developer has filed for record restrictive covenants requiring all lot owners to install electric service in accordance with the Underground Residential Distribution Programs; and

WHEREAS, Developer's total installation payment under this agreement is equal to \$ \$17,352.00, which said amount represents the Company's estimated cost of the underground distribution system in excess of the estimated cost of an overhead distribution system, both of said cost calculations being inclusive of individual lot service, and (Circle if Applicable)

A. Conduit from lot line to final grade elevation at the meter location, as determined by the Company

B. Conduit for primary and secondary cables, as determined by the Company.

(Customer or Developer shall furnish and install conduit, PVC schedule 40 or equal, from final grade elevation at the Company designed meter location to the Company furnished, Developer installed, meter socket.) This payment also includes anticipated estimated excess trenching cost to include rock removal and requirements to obtain suitable backfill from off site. The Developer shall be billed as a separate item for other costs incurred by the Company over and above the costs generally associated with trenching for underground residential distribution which is due principally to debris removal requirements, conduit requirements under street crossings due to inadequate written notice from the Developer as specified in paragraph five (5) below, trench depth requirements different from that generally employed by the Company, seeding and/or reseeding, sodding and/or resodding, or requirements for boring or additional equipment not generally employed by the Company for underground residential trenching.

NOW, THEREFORE, in consideration of the premises and the mutual obligations hereinafter recited, it is hereby agreed between the parties as follows:

I. (Applicable provision to be completed)

Developer will pay Company the total amount of the installation payment(\$ \$17,352.00 ) within ten(10) days from the date of Company's written notice to Developer that said payment is due.

Developer has paid Company the total amount of the installation payment(\$ \_\_\_\_\_).

If the Developer has not paid the Company the total amount of the installation payment, and if the Developer has not met the site preparation requirements as set forth herein, and home construction has not begun, and the Developer has not requested the Company to begin the construction of its facilities prior to the expiration of 180 days from the date of the Agreement, the Company will invoice the Developer for the total amount of the installation payment and the Developer shall pay the total amount of such invoice within 10 days thereafter, or the Company shall have the option to cancel this agreement. However, if the Developer has not met the site preparation requirements as set forth herein, and home construction has not begun, and the Developer has not requested the Company to begin construction of its facilities prior to the expiration of 360 days from the date of this Agreement, the Company shall have the option to cancel this agreement and refund to the Developer any monies collected. Failure to cancel this Agreement at the end of 360 days does not forfeit the Company's right to cancel at a future time.

2. Company will own, install and maintain a single-phase, underground electric distribution system, including surface mounted transformer, surface mounted enclosures which may contain electrical equipment such as sectionalizing devices, capacitors, regulators, etc., and underground cables and the 120/240-volt single-phase service lateral to the meter socket or service entrance for each residence in the said subdivision.

3. Developer agrees to grant Company right-of-way for the construction, operation, maintenance and removal of its facilities together with the right to ingress and egress to and from such facilities and the right to keep clear any obstruction that might injure or endanger said facilities.

4. The Developer shall notify each lot owner (a) that there shall be no plants, shrubs, fences, walls, or other obstructions in front of or within three (3) feet of the sides or rear of any pad-mounted equipment that will obstruct the operation or replacement of the equipment and that the Company shall not be liable for any damages or destruction of any shrubs, trees, flowers, grass or other plants caused by the Company's equipment or employees or the equipment or employees of any contractor or subcontractor in the construction, operation, maintenance or removal of the Company's facilities; (b) to obtain the meter location from the Company prior to the beginning of the installation of the service entrance facilities and associated internal wiring; (c) of their responsibility for installing the Company provided meter socket to Company specifications and providing and installing 2" for 200 amp or 3" for 400 amp schedule 40 PVC or equivalent galvanized conduit from the meter socket to two (2) feet below finished grade.

5. The Developer shall give the appropriate Company District Superintendent a minimum of sixty days written notice prior to the commencement of the installation of any paving, streets, curbs, sidewalks, etc. After the expiration of 30 days from the date hereof, this prior notice is reduced from 60 to 30 days. The Developer, prior to the Company's construction of the underground distribution system, shall make the easement in which the underground equipment or conductors are to be located accessible to the Company's equipment, remove all obstructions and grade to within four (4) inches of the final grade elevation. Streets, lot lines and easements shall be clearly marked by the Developer before Company's underground facilities are installed. All costs incurred by the Company due to improper or inadequate site preparation as stated above shall be billed to the Developer as a separate item.

6. Modification to the underground system after initial installation shall be at the expense of the one requesting or causing the modification.

7. Company, its successors and assigns, will retain title to the underground distribution system, including the underground service lateral and outdoor metering trough serving each said residence, and said underground distribution system provided by Company will not in any way be considered a fixture or fixtures and thereby a part of said real estate but will remain personal property belonging to Company, its successors and assigns, and will be subject to maintenance and removal by Company, its successors and assigns, in accordance with the applicable Rules and Regulations approved by the Alabama Public Service Commission.

8. The covenants set forth in paragraph three (3) and paragraph seven (7) above touch and concern and benefit the land and shall run with the land and shall be binding on Company and Developer, their respective heirs, executors, administrators, successors, and assigns.

9. Any written notice to the Company, except as noted in Paragraph one (1) and five (5) above, shall be addressed to: Alabama Power Company, Operations Manager- 2 Industrial Park Drive, Pelham, AL 35124.

10. Any written notice to Developer provided for herein shall be addressed to Awtrey Development Corporation 5330 Stadium Trace Parkway Birmingham, AL 35244.

IN WITNESS WHEREOF, each of the parties hereto have executed this agreement on the day and year first above written.

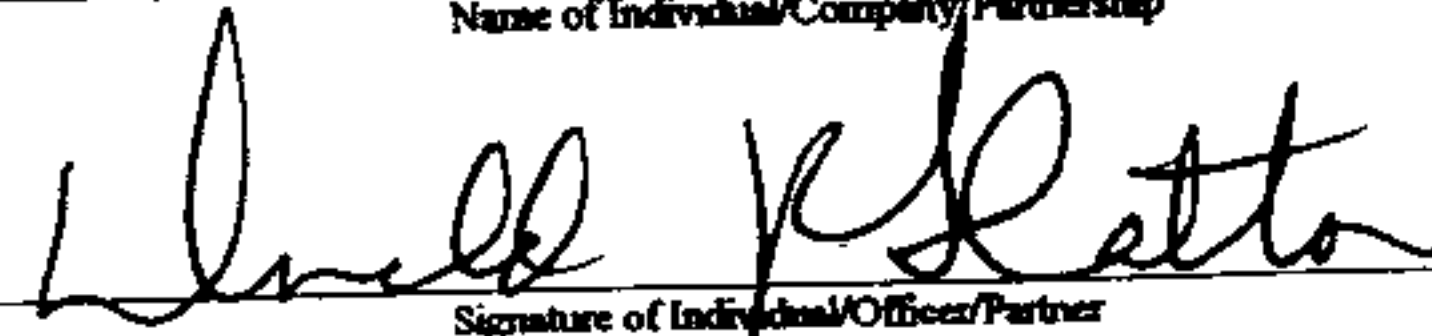
#### ALABAMA POWER COMPANY

Witness:



DEVELOPER

Summer Brook Partnership  
Name of Individual/Company/Partnership

  
Signature of Individual/Officer/Partner