

STATE OF ALABAMA)
 :
SHELBY COUNTY)

This instrument prepared by:
Frank C. Galloway III
Galloway & Moss, L.L.C.
11 Oak Street
Birmingham, AL 35213

DECLARATION OF RESTRICTIVE COVENANTS

COME NOW, the undersigned Marion Rutherford as trustee of the Marion Rutherford Irrevocable Trust dated November 1, 1999 (referred to hereinafter as the "Marion Trust"), Rita Kathryn Rutherford as trustee of the Rita Kathryn Rutherford Irrevocable Trust dated October 6, 1999 (referred to hereinafter as the "Rita Trust") and Phillip Ronel Rutherford as trustee of the Phillip Ronel Rutherford Irrevocable Trust dated November 1, 1999 (referred to hereinafter as the "Phillip Trust") and hereby issue the following restrictive covenants on the properties described herein:

As determined by the Circuit Court of Shelby County, Alabama in CV 97-085 (the "Case"), the Marion Trust, the Rita Trust, and the Phillip Trust each own fee simple title to those three adjoining properties which are cumulatively referred to hereinafter as the "Property" and which are more particularly described on the attached Exhibit A.

The undersigned agree, that in consideration for the agreement by Edward M. Beck, Mary Louise Beck, Joseph Nadler and Diane Nadler (collectively referred to hereinafter as the "Plaintiffs") to dismiss with prejudice the lawsuit they filed against the City of Hoover, Alabama, et al. (CV 97-387 in the Circuit Court of Jefferson County, Alabama – the "Zoning Case") they hereby burden the Property with the following restrictive covenants:

1. The Property is in the shape of a triangle, the hypotenuse of which is the northwesterly border of the Property and which abuts the southern side of Valleydale Road. The junction of the two sides of the Property other than the aforesaid hypotenuse is the southeasternmost part of the Property, and is the point of the Property closest to Indian Crest Drive (the "Point"). From the Point, continuing northwesterly downwards a path perpendicular to the hypotenuse to a point 175 feet from the Point and then easterly and westerly parallel to the hypotenuse until intersection with the aforesaid two sides of the Property. Such description of a triangular portion of the Property is depicted on the attached Exhibit B, and is referred to hereinafter as the "Triangle".
2. The Triangle shall not be used for any purposes other than for single family residential dwellings, and no cleaning or grading of the Triangle may be done except as the minimum amount needed to facilitate construction of the single family residential dwelling(s) on the Triangle. Furthermore, there shall never be more than three single family residential dwellings located on the Triangle and the undersigned agree that no such dwelling thereon shall be constructed

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- until such time as the Triangle has been divided into three individual fee interests of the undersigned, at which time, each such portion of the Triangle may have one single family dwelling thereon, but no more.
3. Notwithstanding the imposition of the aforesaid restrictions in paragraph 2, the Triangle shall be burdened with a forty (40) feet undisturbed buffer along its southern border as set forth in Exhibit B.
 4. The portions of the Property shown on the attached Exhibits C-1, C-2 and C-3 are presently owned by Marion and the Marion Trust are hereby burdened by a restrictive covenant that such lands therein shall forever remain undisturbed and in their present undeveloped and natural state. However, the Marion Trust, its successors and assigns to ownership of that portion of the Property on which the lands shown in Exhibit C-1, C-2 and C-3 are located may, by a duly authorized and executed easement instrument filed of record in the Office of the Judge of Probate of Shelby County, Alabama, declare void, and unenforceable this covenant as to two of the three lands (i.e. the owner may issue a written revocation that this covenant no longer encumbers the land shown on Exhibit C-1 and C-2). However, should the Marion Trust, its successors and assigns to ownership of such properties issue such a revocation, this covenant shall continue to encumber fully the land on which this covenant was not revoked. Therefore, regardless of any overlap in the boundaries of the properties shown in Exhibit C-1, C-2 and C-3, the issuance of any revocation as set forth hereinabove, this covenant shall continue to encumber the entire land depicted in the remaining exhibit.
 5. Exclusive of that portion of the Property shown on Exhibits C-1, C-2 and C-3, there shall be a forty (40) feet wide undisturbed buffer along the entire length of the southern border of the Property, and an additional ten (10) feet wide planted buffer shall adjoin such forty (40) feet wide undeveloped buffer. Provided, however, that for that portion of the Property shown in Exhibit B that adjoins the BP Station, there shall be, in addition to and overlapping with the aforesaid, forty (40) feet wide undisturbed buffer, a one hundred (100) feet wide planted buffer on the westernmost portion of the Marion Trust parcel *not* on the property on which the BP station is located.
 6. All buffers and undisturbed areas described herein are deemed to subsume and overlap with any required buffer areas by any municipal, county, state or federal government or agency.
 7. Any clearing, grading or other form of development work on the Property shall be done in conformity with the "Erosion Control and Stormwater Plan" requirements of the Birmingham Watershed Protection Ordinance.

8. The Property shall be developed in compliance with the site development plan approved by the City of Hoover which is attached hereto as Exhibit D.
9. The recommendations of the Traffic Study submitted with the zoning application shall be implemented, along with the City of Hoover Engineer's recommendations concerning traffic which are contained in his Memorandum dated November 20, 1996 attached hereto as Exhibit E.
10. The Birmingham Water Works Board established guidelines for the control and management of storm water near Lake Purdy. Development of the Property shall comply with those guidelines.
11. Free standing signs shall not exceed sixteen (16) feet in height.
12. All lots shall front a public street.
13. Either cul-de-sac the proposed service road on the east end or install a traffic signal at the intersection with Valleydale Road.
14. Implement a contingency plan for slope failure prior to issue of a land disturbance permit for any parcel zoned "CP".
15. All buildings located on lots which front Valleydale Road shall face Valleydale Road.
16. The following uses (as defined by the City of Hoover Zoning Code and/or as contemplated by the City of Hoover when approving the rezoning of the Property with the Stipulation that the following uses shall be prohibited thereon) shall not be permitted on the Property:
 - a. automobile dealership;
 - b. building material sales;
 - c. veterinary clinic;
 - d. domestic equipment rental with outside storage or parking of equipment;
 - e. commercial recreation and amusement facilities with outdoor activity;
 - f. shopping center;
 - g. hospital;
 - h. mini-warehouses;
 - i. live entertainment;
 - j. gasoline service station;
 - k. oil change facility; and
 - l. establishments where the on-premise sale of alcoholic beverages is the primary use or business activity.

17. All of the restrictive covenants created herein are ones that run with the land and burden the Property as set forth herein and therefore shall be binding on the undersigned's successors and assigns to their respective interests in the Property.
18. This instrument is to be interpreted under the laws of the State of Alabama. These covenants are enforceable by (i) the owners of all adjoining property (including their heirs, successors and assigns to their respective interests in the Property); (ii) the owners of the Property (including their heirs, successors and assigns), (iii) anyone owning property within 500 feet of the Property (including their heirs, successors and assigns), and (iv) the City of Hoover. The prevailing party bringing in any judicial action to enforce these covenants shall be entitled to a judgment awarding them their attorney fees and costs associated with such actions from all non-prevailing parties.

Done this 13th day of December, 1999.

THE MARION RUTHERFORD
IRREVOCABLE TRUST
DATED November 1, 1999

BY: Marion Rutherford
Marion Rutherford
Its: Trustee

STATE OF ALABAMA)
: SHELBY COUNTY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Marion Rutherford, whose name as Trustee of the Marion Rutherford Irrevocable Trust dated November 1, 1999 is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day, that being informed of the content of said instrument, he, with full authority as such Trustee, executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 13th day of December,
1999.

Frank C. Halloway
Notary Public
My commission expires: 11-15-01

Done this 4th day of February, 2000.

THE RITA KATHRYN RUTHERFORD
IRREVOCABLE TRUST
DATED OCTOBER 6, 1999

BY: Rita Kathryn Rutherford
Rita Kathryn Rutherford
Its: Trustee

STATE OF Virginia)
Powhatan COUNTY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Rita Kathryn Rutherford, whose name as Trustee of the Rita Kathryn Rutherford Irrevocable Trust dated October 6, 1999 is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day, that being informed of the content of said instrument, she, with full authority as such Trustee, executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 4th day of February,
2000.

Dale Dutton
Notary Public
My commission expires: My Commission Expires April 30, 2003

Done this 13th day of December, 1999.

THE PHILLIP RONEL RUTHERFORD
IRREVOCABLE TRUST
DATED November 1, 1999

BY:

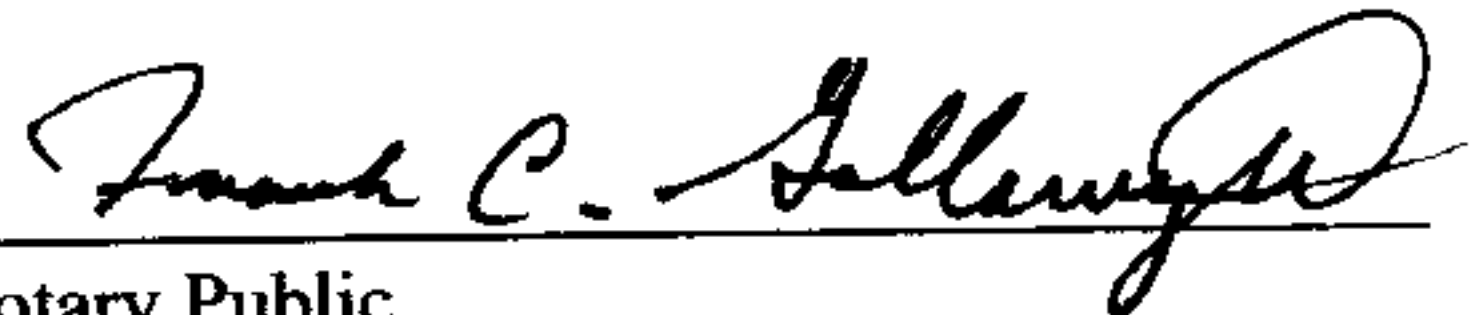


Phillip Ronel Rutherford
Its: Trustee

STATE OF ALABAMA
SHELBY)
:)
SHELBY COUNTY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Phillip Ronel Rutherford, whose name as Trustee of the Phillip Ronel Rutherford Irrevocable Trust dated November 1, 1999 is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day, that being informed of the content of said instrument, he, with full authority as such Trustee, executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 13th day of December,
1999.



Notary Public

My commission expires: 11-15-01

Phillip Ronel Rutherford

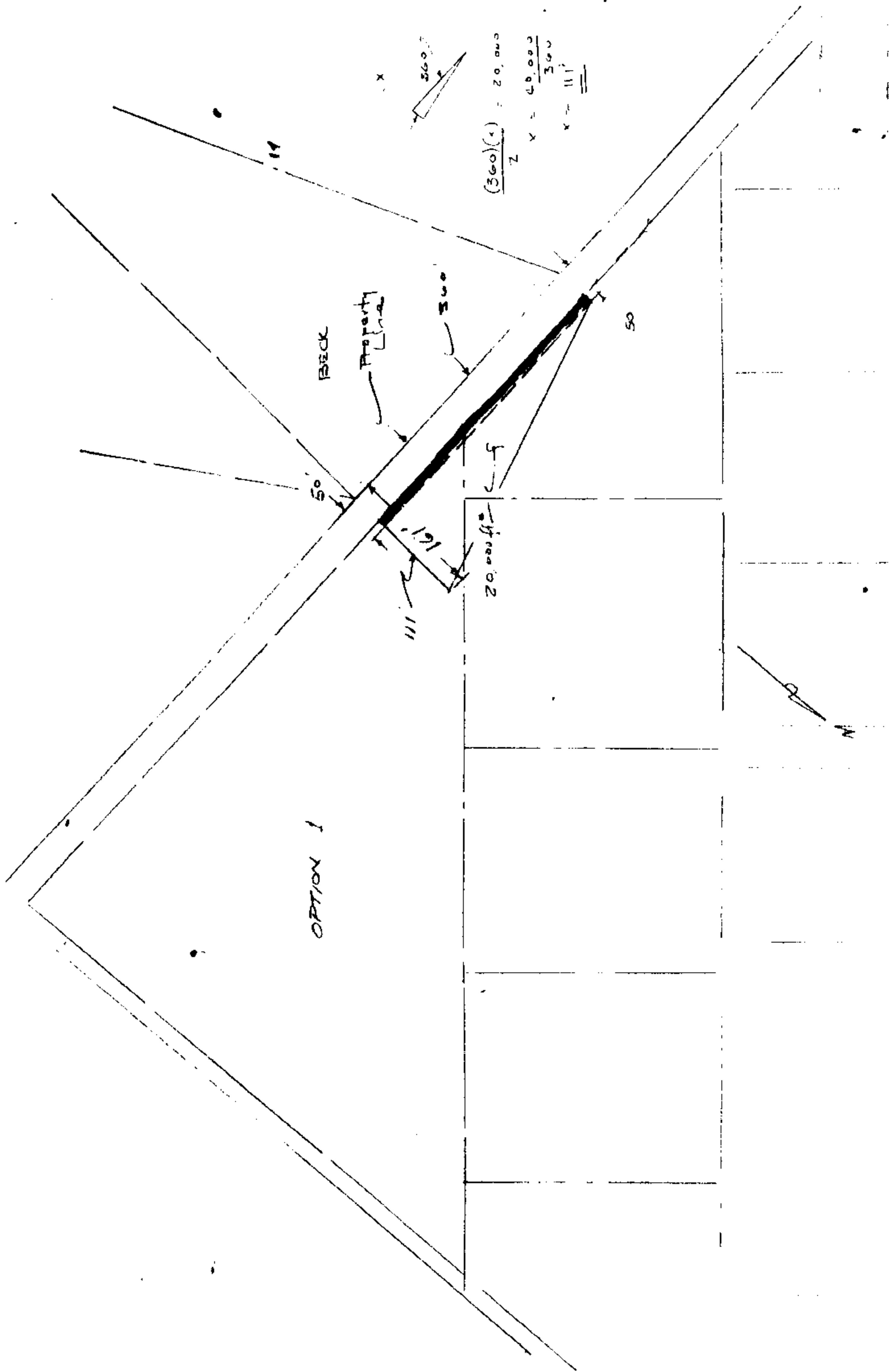
A parcel of land situated in the SW 1/4 of the SE 1/4 of the SE 1/4 and the NW 1/4 of the SE 1/4 of Section 20, Township 19 South, Range 2 West, Shelby County, Alabama, more particularly described as follows: Begin at the SE corner of the SW 1/4 of the SE 1/4 of said section; thence in a westerly direction along the south line of said 1/4-1/4 section, a distance of 102.00 feet; thence 70 degrees, 23 minutes right, in a northwesterly direction a distance of 1177.02 feet to the southeasterly Right of Way line of Valleydale Road; thence 68 degrees, 00 minutes, 33 seconds right, in a northeasterly direction along said Right of Way line a distance of 232.06 feet to a point of curve to the left, having a radius of 5769.65 feet; thence continue in a northeasterly direction along said Right of Way and said curve to the left a distance of 390.92 feet to the east line of the NW 1/4 of the SE 1/4 of said section; thence 132 degrees, 07 minutes, 13 seconds right from chord of said curve, in a southerly direction along the east line of said 1/4-1/4 sections, a distance of 1533.11 feet to the Point of Beginning, containing 9.5 acres more or less.

Marion Rutherford

A parcel of land situated in the SW 1/4 of the SE-1/4 and the SE 1/4 of the SW 1/4, of Section 20, Township 19 South, Range 2 West, Shelby County, Alabama, more particularly described as follows: Commence at the SE corner of the SW 1/4 of the SE 1/4 of said section, thence in a westerly direction along the south line of said 1/4-1/4 section a distance of 312.00 feet to the Point of Beginning; thence continue westerly along the south line of said 1/4-1/4 section, a distance of 995.84 feet; thence 71 degrees, 34 minutes, 22 seconds right, in a northwesterly direction, a distance of 243.22 feet to the southeasterly Right of Way line of Valleydale Road, said point being on a curve having a radius of 6287.09 feet; thence 68 degrees, 56 minutes, 46 seconds right to chord of said curve, in a northeasterly direction along said southeasterly Right of Way, and curve to the left, a distance of 197.00 feet to the end of said curve; thence 24 degrees, 01 minutes 45 second left from chord of said curve along said Right of Way in a northeasterly direction, a distance of 199.45 feet; thence 21 degrees, 54 minutes, 10 seconds right, in a northeasterly direction along the southeasterly Right of Way line of said road, a distance of 241.75 feet; thence 88 degrees, 29 minutes right, in a southeasterly direction, a distance of 952.27 feet to the south line of the SW 1/4 of the SE 1/4 of said section and being the Point of Beginning, containing 9.6 acres more or less.

Rita Rutherford

A parcel of land situated in the SW 1/4 of the SE 1/4 of Section 20, Township 19 South, Range 2 West, Shelby County, Alabama, more particularly described as follows: Commence at the SE corner of said 1/4-1/4 section; thence in a westerly direction, along the south line of said 1/4-1/4 section, a distance of 102.00 feet to the Point of Beginning; thence continue westerly along the south line of said 1/4-1/4 section, a distance of 210.00 feet; thence 46 degrees, 52 minutes, 33 seconds right in a northwesterly direction a distance of 952.27 feet to the southeasterly Right of Way line of Valleydale Road; thence 91 degrees, 31 minutes right in a northeasterly direction along said Right of Way, a distance of 622.97 feet; thence 111 degrees, 59 minutes, 27 seconds right, in a southeasterly direction, a distance of 1177.02 feet to the south line of said 1/4-1/4 section and being the Point of Beginning, containing 9.5 acres more or less.



$$\frac{(360)(\pi)}{2} = 20,000$$

$$x = \frac{20,000}{360}$$

$$x = 55.56$$

EXHIBIT C-1

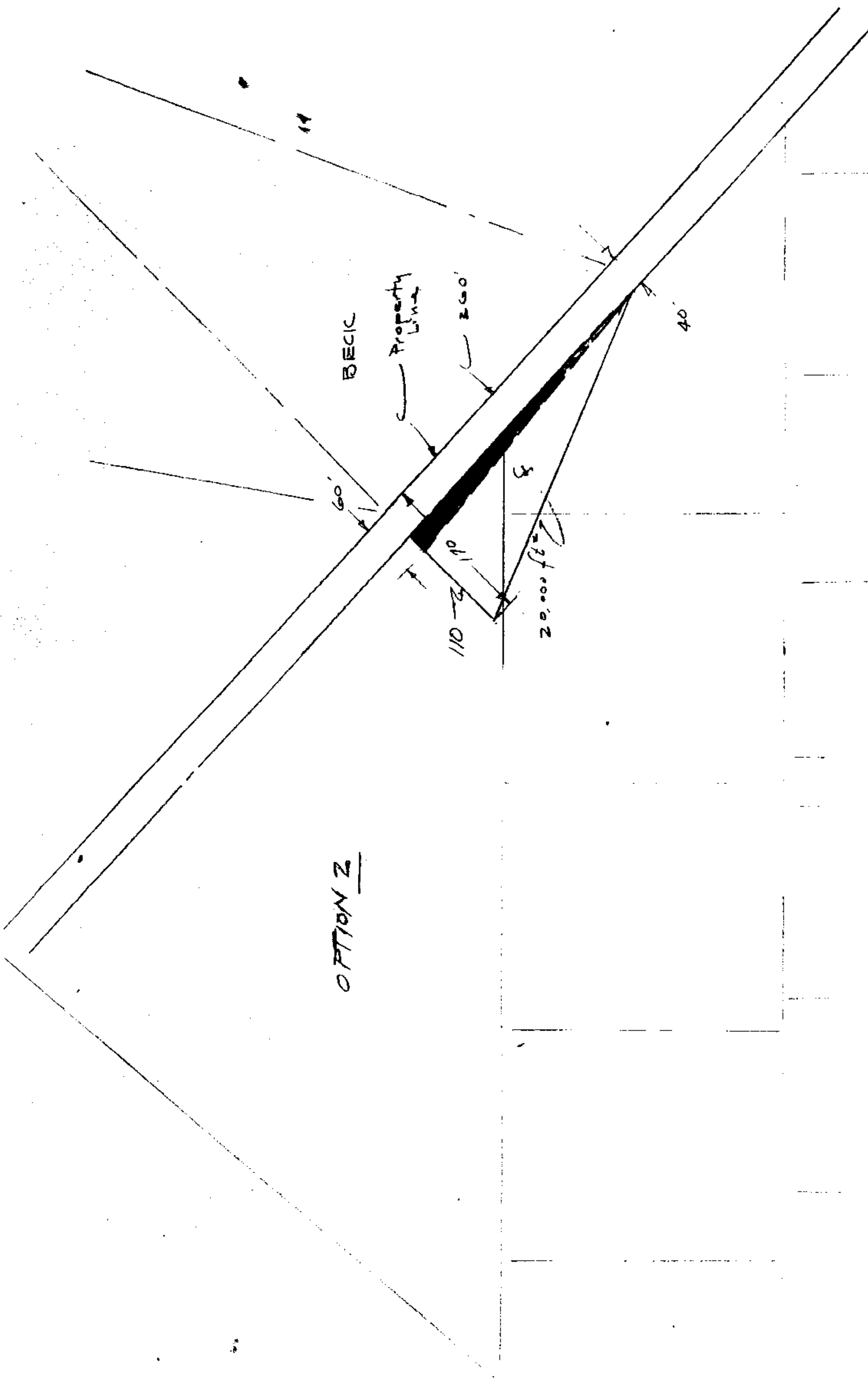


EXHIBIT C-2

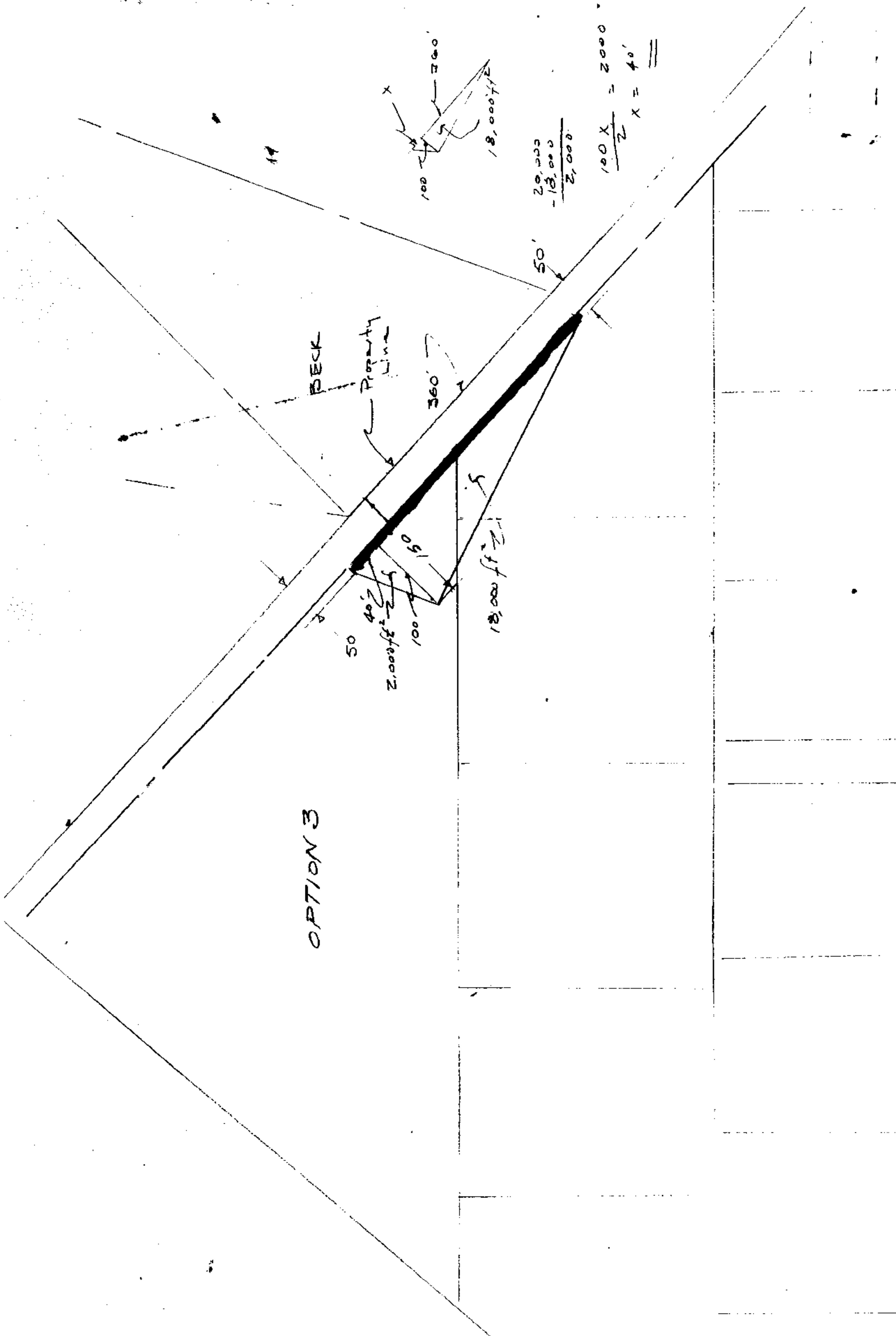
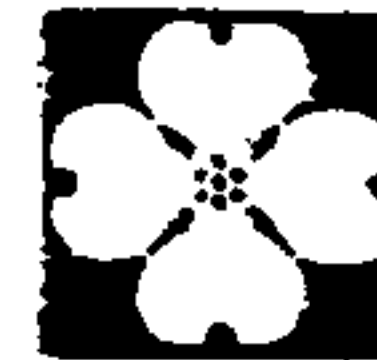


EXHIBIT C-3

**Engineering Department
City of Hoover**

100 MUNICIPAL DRIVE
POST OFFICE BOX 380628
HOOVER, AL 36038-0628
TELEPHONE (205) 444-7628
FAX (205) 444-7745

Timothy J. Westhoven, P.E.
City Engineer



HOOVER

Memorandum

To: Bob House
From: *[Signature]* Tim Westhoven
Date: November 20, 1996
Re: Review of Traffic Impact Study Titled
"Valleydale Road Mixed-Use Development"
CC: Allen Pate

I have completed the review of the referenced traffic study. I found the study to be complete and thorough study done in accordance with nationally accepted methods and practices. I am in concurrence with the distribution and growth assumptions outlined in the report. I am also in concurrence with the recommendation outlined in the "Conclusions" section of the report. These indicate the following:

1. A traffic signal will be required at the intersection of Valleydale Road at Southlake Lane.
2. Construction of an additional eastbound lane on Valleydale Road across the frontage of the proposed development.
3. Developer provide the necessary matching funds for an additional westbound lane to be added to the existing Shelby County TOPICS project.
4. All intersections with Valleydale Road shall have left turn lanes on Valleydale Road.
5. All new accesses shall provide two exit lanes and one entrance lane.
6. An additional lane will be added to the southbound approach on Southlake Lane.

November 20, 1996

Page 2 of 2
Review of Traffic Impact Study Titled -
"Valleydale Road Mixed-Use Development"

In addition to these requirements, I would recommend the following be added:

1. When traveling eastbound from I-65 toward Southlake on Valleydale Road, Valleydale goes from two through lanes to one through and one left turn lane. I recommend the proposed additional eastbound land be additionally extended approximately 300-500 feet to provide two through lanes in the eastbound direction. The current proposal starts at the entrance to BP Station. My recommendation would start at the existing right turn lane for the residence adjacent to the BP Station to the west.
2. No building permits be issued for this development without the additional westbound lane being under contract for construction. The developer should have the option of also providing this lane at their expense.
3. A short left turn lane should be required for the southbound approach on Indian Lake Drive. It should be capable of storing two vehicles.

The interstate ramps are shown to be currently operating at unacceptable levels of service. This will continue under the current proposal. There are two projects currently planned to address some of this congestion. One project addresses the southbound ramp and is awaiting ALDOT permit approval. The other project addresses the northbound ramp and is scheduled to be designed this year.

Storm water detention will be required for this site. The developer's engineer has indicated he would propose detention on each individual site. This is acceptable. However, for aesthetic purposes, I would recommend that if individual detention is chosen that it be required to be underground detention.

I believe this covers all of the concerns for this project. I'm sorry I won't be at the meetings to address any other concerns. Let me know if I can help further.

LS

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EXHIBIT E (PAGE 2)