

STATE OF ALABAMA)
SHELBY COUNTY)

00-76

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ORIGINAL SIGNATURES TO:
CITY CLERK
THIRD FLOOR, CITY HALL
BIRMINGHAM, AL 35203

Inst # 2000-17642
J-17642

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT is made and entered into this the 18th day of May, 2000 by the City of Birmingham, a municipal corporation, hereinafter called **GRANTOR**, in favor of Greystone Development Company, LLC, an Alabama limited liability company, hereinafter called **GRANTEE**.

WITNESSETH:

WHEREAS, the City Council of the City of Birmingham, Jefferson County, Alabama, has, by an ordinance duly, properly and legally made and passed on the 16th day of May, 2000, and entered on its minutes directing Bernard Kincaid, its Mayor, to execute and deliver an easement agreement over and upon the hereinafter described real property situated in Shelby County, Alabama owned by **GRANTOR**, which ordinance has been duly and legally advertised in accordance with the laws and statutes of the State of Alabama, and no objections have been made after publication of said ordinance; and

WHEREAS, **GRANTOR** is now desirous of granting to **GRANTEE** easements over and upon the hereinafter described real estate in accordance with the terms and conditions of the above referred to ordinance.

NOW, THEREFORE, in consideration of the premises and the execution by **GRANTEE** of that certain Declaration of Watershed Protective Covenants for Greystone Development dated as of December 15, 1999 (the "Watershed Protective Covenants") and recorded contemporaneously herewith in the Office of the Judge of Probate of Shelby and Jefferson Counties, Alabama pursuant to which **GRANTEE** has encumbered all real property owned by **GRANTEE** by the terms and

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conditions contained in the Watershed Protective Covenants, **GRANTOR**, by and through its Mayor, subject to the terms and provisions set forth below, does hereby grant, bargain, sell and convey unto the said **GRANTEE**, a permanent and perpetual easement over, across, through, under and upon that certain real property (the "Property") situated in Shelby County, Alabama, which is more particularly described in Exhibit A attached hereto and incorporated herein by reference. The foregoing easement may be used by **GRANTEE** for the purposes of constructing, installing, maintaining, operating, repairing, changing the size of, relocating, removing and/or replacing on the Property any of the following: (a) subject to the provisions of Paragraph 2 below, either a public or private roadway (the "Roadway"), (b) entrance signage, lighting and landscaping and (c) below ground utility, cable television and communication lines, pipes, conduit, wiring and any other apparatus and appurtenances (collectively, the "Utility Lines"). In connection with and during construction of the Roadway, **GRANTOR** does further grant, bargain, sell and convey to **GRANTEE** over and upon those portions of **GRANTOR'S** property lying adjacent to the Property (i) a temporary construction easement to the extent reasonably necessary to complete construction of the Roadway pursuant to plans and specifications submitted to and approved by **GRANTOR** and (ii) a permanent easement to the extent reasonably necessary for lateral support of the Roadway constructed pursuant to plans and specifications submitted to and approved by **GRANTOR**.

TO HAVE AND TO HOLD to the said **GRANTEE**, its successors and assigns, forever.

The easement granted above by **GRANTOR** to **GRANTEE** shall be and is subject to the following:

1. All easements granted herein by **GRANTOR** to **GRANTEE** shall be and are covenants running with the land which shall be binding upon and inure to the benefit of **GRANTOR** and **GRANTEE** and their respective successors and assigns, forever.

2. Following completion of construction of the Roadway, **GRANTOR** and **GRANTEE** agree to dedicate, and **GRANTOR** agrees to accept the dedication of, the Roadway (exclusive of the medians situated within the Roadway) as a public roadway; provided, however, that if upon completion of construction of the Roadway, all of the property owners whose real property will be provided with primary access via the Roadway and **GRANTOR**, as the owner of the real property lying directly adjacent to the Roadway (whose consent as the owner of real property is hereby given), consent to and approve of that portion of the Roadway becoming a private roadway from and including that point on the Roadway on which any Limited Access Devices, as herein defined, have been constructed by **GRANTEE** and running from such point in an easterly and southerly direction to the point that the Property intersects with Saddle Creek Trail, a private roadway (the "Private Portion"), then the Private Portion of the Roadway shall be and remain a private roadway to be maintained by **GRANTEE**, its successors and assigns, at all times thereafter and **GRANTOR** agrees to take any action reasonably necessary to vacate any portion of the Private Portion of the Roadway which was previously part of a public roadway. To the extent any portion of the Roadway becomes a private roadway, then **GRANTOR** acknowledges and agrees that (a) the easement granted above to **GRANTEE** shall become a permanent, perpetual and exclusive easement in favor of **GRANTEE**, its successors and assigns, subject to the easements reserved by **GRANTOR** pursuant to Paragraphs 3 and 4 below, (b) **GRANTEE** may construct, install, maintain, operate, repair and/or replace at any location within 100 yards on either side of the "LAD Location" shown on the map attached hereto as Exhibit B and incorporated herein by reference either a gate, gatehouse, guardhouse and other devices (collectively, the "Limited Access Devices") on and across any portion of the Property which may limit, restrict and otherwise prohibit the general public from obtaining access to the Private Portion of the Roadway and (c) **GRANTEE**, its successors and assigns, shall have the right

to establish and adopt reasonable rules and regulations relating to the use of the Private Portion of the Roadway, which may include establishing safety measures. The Roadway, whether the same is a public or private roadway, shall be named and known as "Greystone Legacy Drive." To the extent any portion of the Roadway becomes a private roadway, then **GRANTOR** does further grant, bargain, sell and convey to **GRANTEE**, its successors and assigns, forever, an additional permanent and perpetual easement over, across, through, under and upon that portion of **GRANTOR'S** property lying outside of the Property for the purpose of constructing and maintaining thereon Limited Access Devices, islands, medians, turnarounds and entry lanes for the Private Portion of the Roadway, which additional easement shall have a width which is 25 feet outside of the Property on either side of the Property and the length of which is 100 yards on each side of the Limited Access Devices constructed by **GRANTEE**.

3. **GRANTOR** reserves, for itself, its agents, successors and assigns, an easement and right-of-way for the purpose of ingress and egress across the Roadway, subject to the following terms and conditions:

(a) If, pursuant to Paragraph 2 above, any portion of the Roadway becomes a private roadway, then **GRANTEE** may construct, install, complete and maintain Limited Access Devices on, across and upon the Property in accordance with the provisions of Paragraph 2 above which may limit, restrict and otherwise prohibit the general public from obtaining access to the Private Portion of the Roadway;

(b) To the extent any portion of the Roadway becomes a private roadway, **GRANTOR**, for itself, its agents, successors and assigns, covenants and agrees to at all times comply with and otherwise abide by any safety rules and regulations adopted by **GRANTEE**, its successors and assigns, regarding the use of the Private

Portion of the Roadway; provided, however, that the foregoing rules and regulations shall not affect or be binding upon any emergency vehicles (e.g., fire, police and medical and emergency vehicles) utilizing the Roadway; and

(c) The access easement reserved herein by **GRANTOR** shall be appurtenant to and pass and run with title to the real property retained by **GRANTOR** situated contiguous to the Property and may not be transferred, assigned, sold, conveyed or otherwise alienated separate and apart from ownership of such contiguous property.

4. **GRANTOR** does further reserve for the benefit of all public utilities, an easement and right-of-way across and upon the Property for the purposes of, at such times and from time to time in the future as said public utility may elect, laying, constructing, installing, maintaining, operating, renewing, repairing, changing the size of, relocating, removing and/or replacing at will any Utility Lines beneath the surface of the ground on the Property, deemed by said public utility to be necessary or useful in connection with the transportation, distribution and sale of utility services. Such rights and privileges reserved herein shall include all rights and privileges necessary or convenient for the full enjoyment or use of the rights and privileges herein granted, including, but not limited to, the free right of ingress and egress over the Property and over any property owned by **GRANTEE** which is adjacent to the Property. Said public utilities' rights of ingress and egress over the Property and any property which is owned by **GRANTEE** which is adjacent to the Property shall be limited to and subject to the following terms and conditions: (a) any and all Utility Lines to be constructed on the Property pursuant to this Paragraph 4 shall be located underground and outside of the roadbed of the Roadway and shall not interfere with, damage or destroy any other improvements constructed or maintained by **GRANTEE** on any portion of the Property and (b) the exercise of the easement granted herein to such public utilities shall be limited to those times when


said public utilities require access to and from the Property for the purposes of laying, constructing, installing, maintaining, operating, renewing, repairing, changing the size of, relocating, removing and/or replacing their Utility Lines within the Property, as such public utilities deem to be necessary or useful.

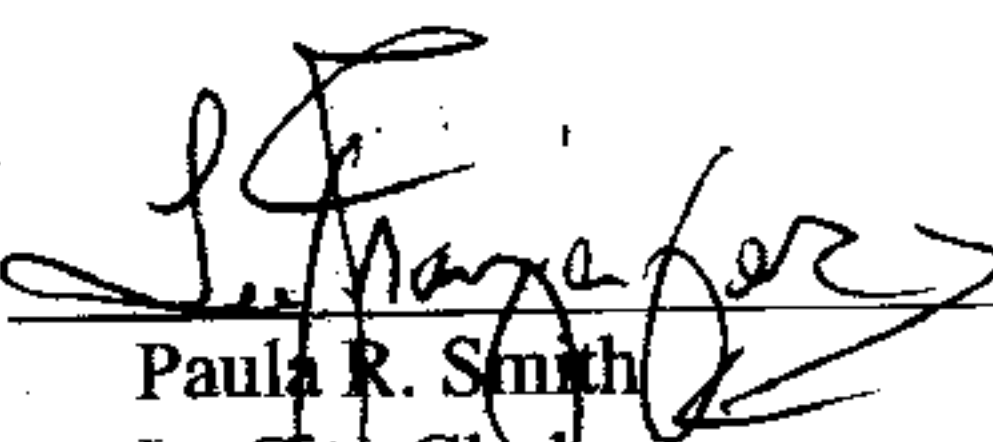
5. **GRANTEE** further agrees that it shall be responsible for obtaining any and all necessary governmental permits, including, if required, permits from the Alabama Department of Environmental Management and/or the Army Corps of Engineers, in connection with any realignment of Cox Creek necessitated by the construction of the Roadway.

6. Contemporaneously with the execution of this Easement Agreement, **GRANTOR** and **GRANTEE** will enter into the Watershed Protective Covenants, the form of which has been previously approved by **GRANTOR** and **GRANTEE**.

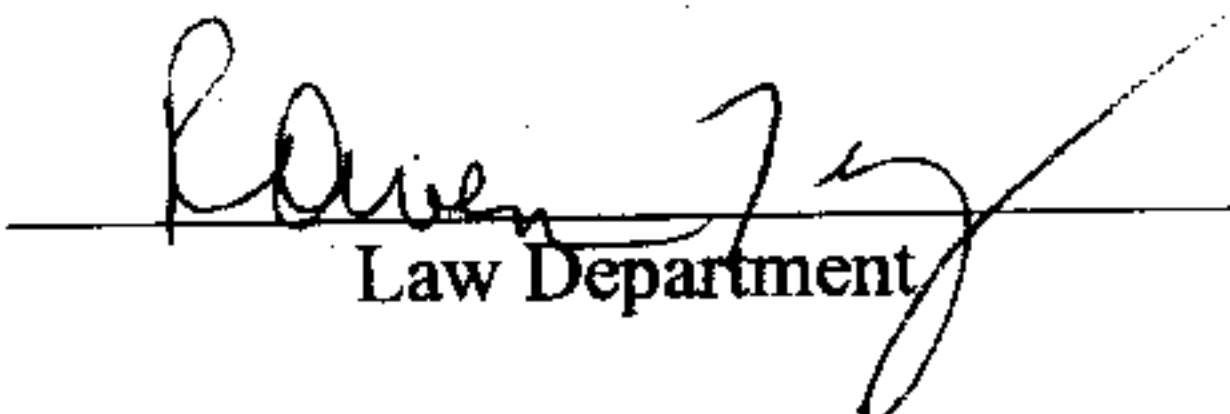
IN WITNESS WHEREOF, GRANTOR and GRANTEE have caused this Easement Agreement to be duly executed on the day and year first above written.

**THE CITY OF BIRMINGHAM,
ALABAMA**, a municipal corporation

By: 
Bernard Kincaid
Its Mayor

ATTEST: 
Paula R. Smith
Its City Clerk

Approved as to form:


Law Department

**GREYSTONE DEVELOPMENT COMPANY,
LLC, an Alabama limited liability company**

By: **DANIEL REALTY CORPORATION,**
an Alabama corporation, Its Manager

By: [Signature]
Its: [Signature]

STATE OF ALABAMA)
 :
JEFFERSON COUNTY)

I, the undersigned authority, in and for said County in said State, hereby certify that Bernard Kincaid, whose name as Mayor of the City of Birmingham, Alabama, a municipal corporation, is signed to the foregoing instrument and who is known to me, acknowledge before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of the City of Birmingham.

GIVEN under my hand and official seal on this the 18th day of May,
2000.

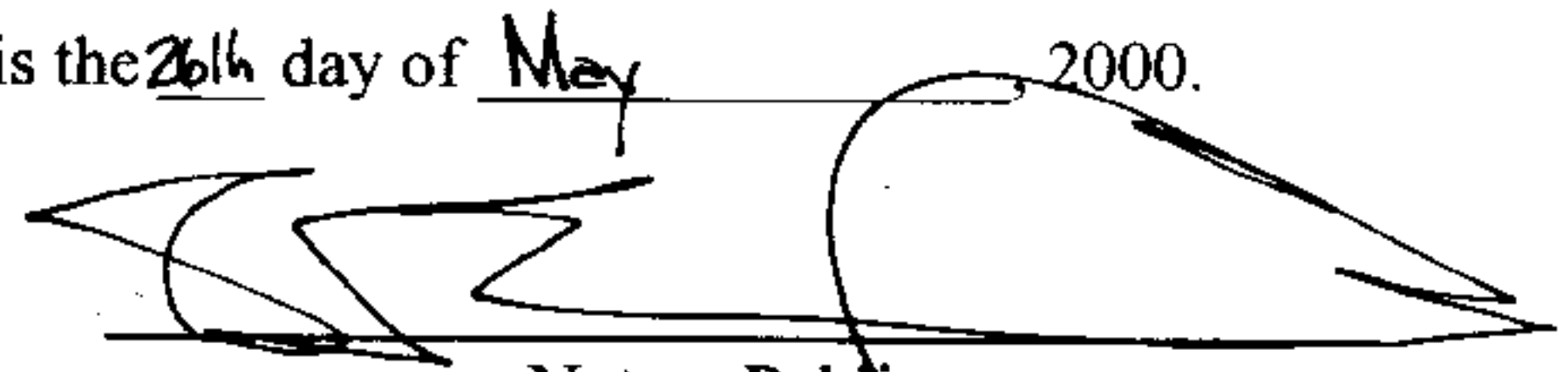
[Signature]
Notary Public
My Commission Expires: 8-13-2002

[NOTARIAL SEAL]

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said county, in said state, hereby certify that Donald K. Lloyd whose name as Senior Vice President of DANIEL REALTY CORPORATION, an Alabama corporation, as Manager of GREYSTONE DEVELOPMENT COMPANY, 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 such corporation in its capacity as manager of said limited liability company.

Given under my hand and official seal this the 26th day of May, 2000.


Notary Public
My Commission Expires: 9/8/01

This instrument prepared by and
upon recording should be returned to:
Stephen R. Monk, Esq.
Bradley Arant Rose & White LLP
2001 Park Place, Suite 1400
Birmingham, Alabama 35203
(205) 521-8429

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

A strip of land situated in Section 21, Township 18 South, Range 1 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Northeast Corner of the Southeast $\frac{1}{4}$ of said Section 21, Township 18 South, Range 1 West, Shelby County, Alabama and run in a Southwesterly direction along the Northwest Property Line of a parcel of land described in Deed Book 222, Page 701, and a parcel of land described in Instrument No. 1992-26440, as recorded in the Office of the Judge of Probate in Shelby County, Alabama, and said line being the Southeasterly diagonal of the Northwest $\frac{1}{2}$ of the Northeast $\frac{1}{4}$ of said Southeast $\frac{1}{4}$ of Section 21, a distance of 1,639.60 feet to the POINT OF BEGINNING of the centerline of said Right-of-Way, said right-of-way being 70 feet in width and lying 35.00 feet on either side of the following described line:

From said Point of Beginning, turn $84^{\circ}42'20''$ to the right in a Northwesterly direction a distance 0.43 feet to the P.C. (point of Curve) of a curve to the left having a radius of 630.00 feet and a central angle of $13^{\circ}54'29''$; thence in a Northwesterly direction along the arc of said curve and along said centerline a distance of 152.93 feet to the P.T. (Point of Tangent) of said curve; thence tangent to said curve in a Northwesterly direction along said centerline a distance of 188.36 feet to the P.C. (Point of Curve) of a curve to the right having a radius of 400.00 feet and a central angle of $35^{\circ}23'43''$; thence in a Northwesterly direction along the arc of said curve and along said centerline in a distance of 247.11 feet to the P.T. (Point of Tangent) of said curve; thence tangent to said curve in a Northwesterly direction along said centerline a distance of 491.86 feet to the P.C. (Point of Curve) of a curve to the left having a radius of 400.00 feet and a central angle of $10^{\circ}44'27''$; thence in a Northwesterly direction along the arc of said curve and along said centerline a distance of 74.99 feet to the P.T. (Point of Tangent) of said curve; thence tangent to said curve in a Northwesterly direction along said centerline a distance of 99.85 feet to the P.C. (point of Curve) of a curve to the left having a radius of 400.00 feet and a central angle of $48^{\circ}28'38''$; thence in a Northwesterly and Westerly direction along the arc of said curve and along said centerline a distance of 338.44 feet to the P.T. (Point of Tangent) of said curve; thence tangent to said curve in a Westerly direction a distance of 292.74 feet to the P.C. (point of Curve) of a curve to the right having a radius of 400.00 feet and a central angle of $50^{\circ}02'23''$; thence in a Northwesterly direction along the arc of said curve and along said centerline a distance of 349.34 feet to the P.T. (Point of Tangent) of said curve; thence tangent to said curve in a Northwesterly direction a distance of 162.80 feet to a point. At this point, the right-of-way becomes variable in width, and is more particularly described as follows:

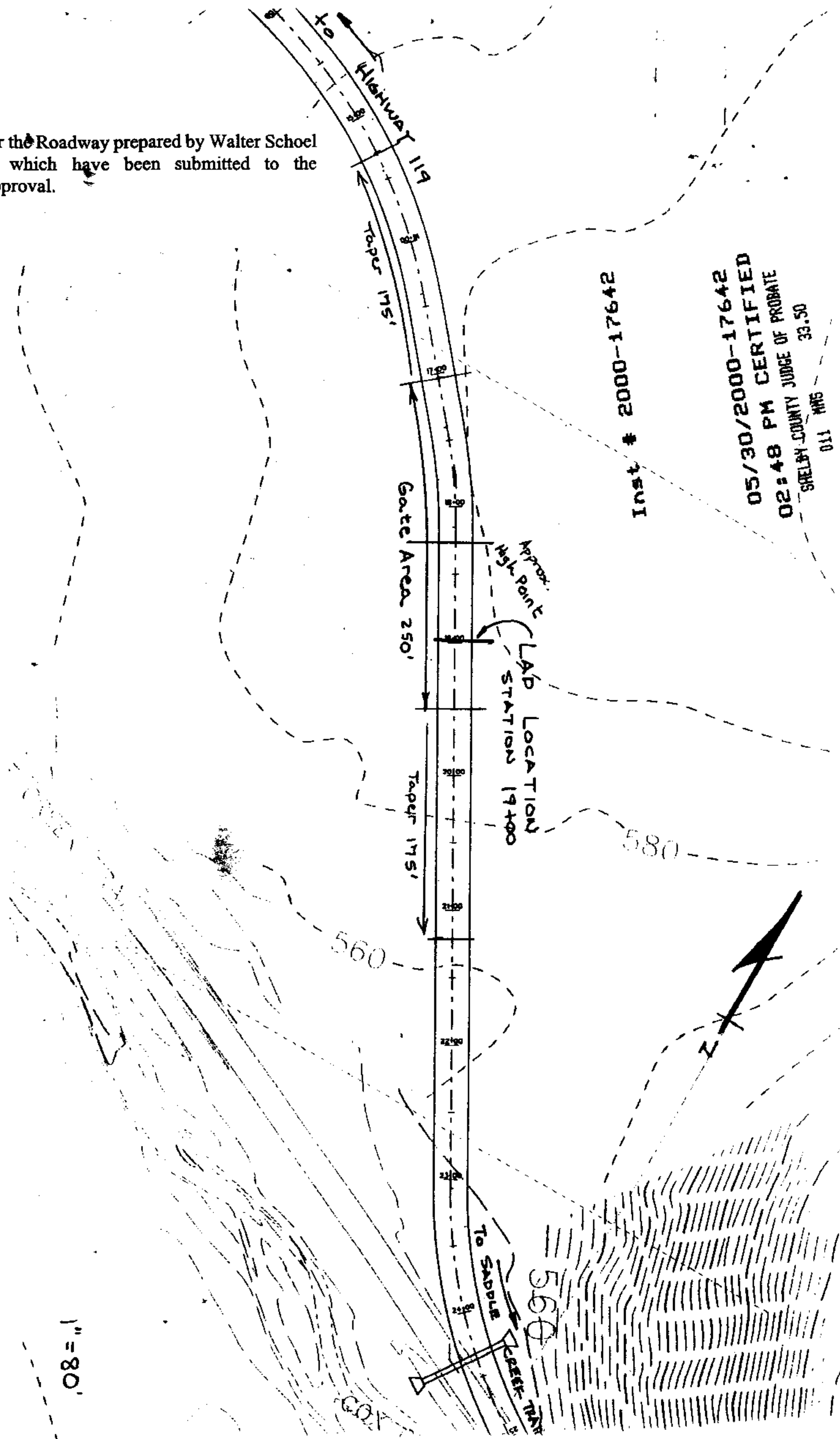
From the point thus established as being the POINT OF BEGINNING of said Variable Right-of-Way; turn $90^{\circ}00'00''$ to the right in a Northeasterly direction a distance of 35.00 feet; thence $79^{\circ}55'45''$ to the left in a Northwesterly direction a distance of 176.87 feet to a point; thence $29^{\circ}57'07''$ to the left in a Northwesterly direction a distance of 242.09 feet to the P.C. (point of Curve) of a curve to the right having a radius of 50.00 feet and a central angle of $92^{\circ}03'34''$; thence in a Northwesterly, Northerly and Northeasterly direction along the arc of said curve a distance of 80.34 feet to the P.T. (Point of Tangent) of said curve, said point being located on

the Southeasterly Right-of-Way Line of Alabama Highway No. 119 (Cahaba Valley Road), and said right-of-way lying 40.00 feet Southeast of the present centerline of said road; thence 180°00'00" to the left (Angle of Measured To Tangent) in a Southwesterly direction along said Right-of-Way line a distance of 220.14 feet to the P.C. (Point of Curve) of a curve to the right having a radius of 50.00 feet and a central angle of 87°56'26"; thence 180°00'00" to the left to become tangent to said curve and run in a Northeasterly, Easterly and Southeasterly direction a distance of 76.74 feet to the P.T. (Point of Tangent) of said curve; thence tangent to said curve in a Southeasterly direction a distance of 250.00 feet; thence 14°46'23" to the right in a Southeasterly direction a distance of 133.87 feet; thence 84°53'31" to the left in a Northeasterly direction a distance of 35.00 feet to the Point of Beginning.

Less and Except any portion of the foregoing described property situated within the right-of-way of Alabama State Highway 119.

EXHIBIT B

This map is part of the plans for the Roadway prepared by Walter Schoel Engineering Company, Inc. which have been submitted to the GRANTOR for review and approval.



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