

Prepared by and to be returned to:
Mesquite Creek Development, Inc.
Attn: General Counsel
P.O. Box 105035
Atlanta, Georgia 30348

STATE OF ALABAMA
COUNTY OF SHELBY

Post # 2000-25925
08/02/2000-25925
11:54 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
J04 MMS 07.00

DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS (the "Declaration") is made as of the 1 day of AUGUST, 2000, by PELHAM PARKWAY, LLC, an Alabama limited liability company, whose address is 162 Cahaba Valley Rd. Pelham, AL 35124-4326 (hereinafter referred to as "Declarant").

WITNESSETH:

WHEREAS, Declarant simultaneously herewith has conveyed to Mesquite Creek Development, Inc., a Georgia corporation ("**Mesquite**"), that certain real property situated in Shelby County, Alabama, being more particularly described on **Exhibit "A"**, attached hereto and made a part hereof for all purposes ("**Mesquite Property**"); and

WHEREAS, under the provisions of that certain Real Estate Purchase Contract by and between Declarant and Mesquite having an effective date of March 23, 2000, Declarant did agree to place the following restrictions on certain real property owned or controlled by Declarant, and any entity which in whole or in part owns or controls Declarant, is owned or controlled by Declarant or is owned or controlled by any of Declarant's shareholders, partners or principals (collectively "**Declarant's Affiliates**");

NOW, THEREFORE, Declarant, for and in consideration of the sum of One Dollar (\$1.00) in hand paid, the receipt and sufficiency of which is hereby acknowledged, covenants and agrees, and for itself, its heirs, successors, legal representatives and assigns, does hereby covenant and declare as follows:

1. No facility which serves as a retail outlet for motor fuels or as a convenience store or the advertising thereof shall be constructed, maintained or operated on the tract or parcel of land which is presently owned or controlled by Declarant or Declarant's Affiliates described on **Exhibit "B"** attached hereto and made a part hereof for all purposes (the "**Declarant's Property**"). The foregoing shall not be deemed to prohibit the sale of motor oil on Declarant's Property; and

2. The above restrictions and covenants shall be deemed to be covenants and restrictions running with the land for the benefit of the Mesquite Property and as a burden upon the Declarant's Property affected thereby, and shall be in full force and for the longest period allowed by applicable law, and shall be binding upon Declarant, Declarant's Affiliates and their respective heirs, successors, legal representatives, successors-in-title and assigns, and shall be enforceable by Mesquite, its successors, assigns, successors-in-title and tenants.

3. In the case of any violation or attempted violation by Declarant and/or Declarant's Affiliates and their respective heirs, successors, legal representatives, successors-in-title or assigns of any of the covenants or restrictions contained within this Declaration, Mesquite, its successors, assigns, successors-in-title and tenants may enforce these covenants and restrictions by injunction or other appropriate proceedings and the prevailing party shall be entitled to recover its damages, costs and reasonable attorneys' fees.

4. It is the intention of Declarant that should there be any provision or provisions of this Declaration which shall prove to be invalid, void, illegal or unenforceable by reason of present or future laws or rules or regulations of any governmental body or entity or any court of competent jurisdiction, such provision or provisions of this Declaration shall in no way affect, impair or invalidate any of the remaining provisions of this Declaration, and all such remaining provisions shall remain in full force and effect. Furthermore, it is the intention of the Declarant that if any provision or provisions are declared to be invalid, void, illegal or unenforceable by reason of present or future laws, rules or regulations of any governmental body or entity or any court of competent jurisdiction, such provision or provisions shall be revised by such governmental body

or entity or court to render same fully valid and, to the extent possible, conform to the terms of this Declaration. Such revised provision or provisions shall then be fully binding upon the Declarant as if they were contained in this Declaration.

IN WITNESS WHEREOF, Declarant has executed and sealed these presents the day and year above written.

Witness [Signature]
Witness [Signature]

DECLARANT: PELHAM PARKWAY, L.L.C., an
Alabama limited liability company
By: [Signature]
JOHN McGEEVER
Title: MEMBER

STATE OF ALABAMA)
COUNTY OF St. Clair)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify JOHN McGEEVER, as MEMBER of PELHAM PARKWAY, L.L.C., an Alabama limited liability company whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day, that being informed of the contents of the foregoing conveyance she executed the same voluntarily on the day the same bears date.

Given under my hand and seal this 1 day of AUGUST, 2000.

My Commission Expires: 3.1.02

[Signature]
Notary Public

EXHIBIT "A"

Declaration of Restrictive Covenants Pelham Parkway LLC

The "Mesquite Property"

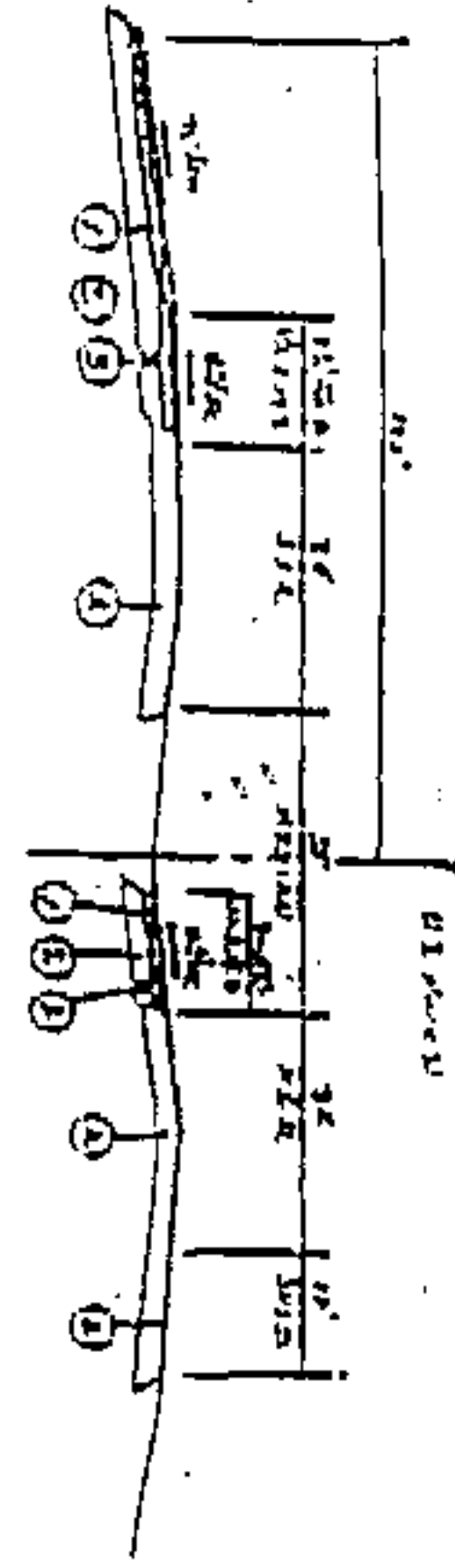
Lot 2, according the Survey of Pelham Parkway Commercial Subdivision, as recorded in Map Book 27, Page 44, in the Probate Office of Shelby County, Alabama. Situated in Shelby County, Alabama

EXHIBIT "B"

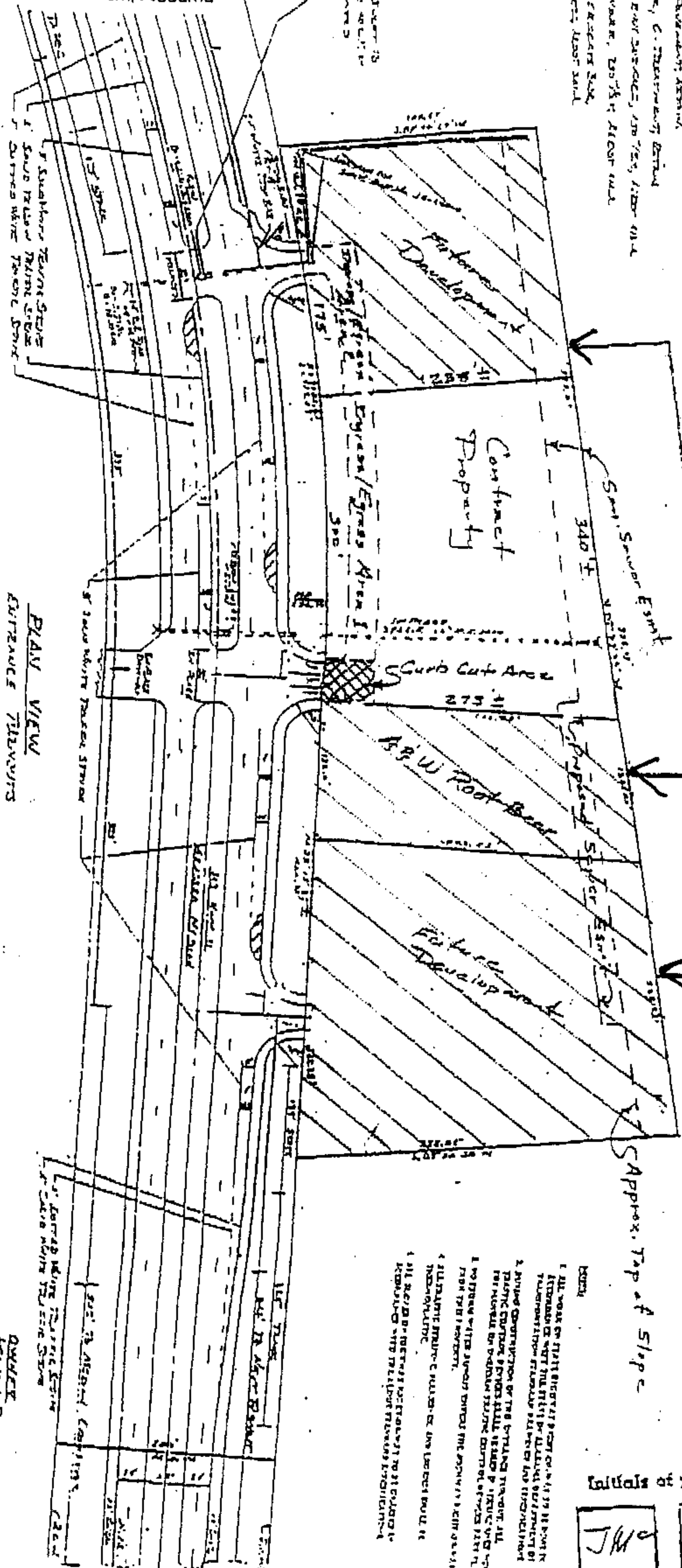
SELLER:
PURCHASER:
PROPERTY LOCATION:

Palham Parkway, LLC
Metropolitan Foods, Inc.
US Highway 31
Palham, Alabama

- 1. 2.00 ACRES, 200' x 1,000' (approx.)
- 2. 2.00 ACRES, 200' x 1,000' (approx.)
- 3. 2.00 ACRES, 200' x 1,000' (approx.)
- 4. 2.00 ACRES, 200' x 1,000' (approx.)
- 5. 2.00 ACRES, 200' x 1,000' (approx.)
- 6. 2.00 ACRES, 200' x 1,000' (approx.)
- 7. 2.00 ACRES, 200' x 1,000' (approx.)
- 8. 2.00 ACRES, 200' x 1,000' (approx.)
- 9. 2.00 ACRES, 200' x 1,000' (approx.)
- 10. 2.00 ACRES, 200' x 1,000' (approx.)



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THIS PARCEL (LOT 1)
PALHAM PARKWAY
COMMERCIAL SUBDIVISION
MB 26, PAGE 116 IS
SPECIFICALLY NOT
INCLUDED WITHIN
DECLARANTS PROPERTY AND
IS NOT SUBJECT TO THESE
COVENANTS.

PLAN VIEW
EUTRACE TILLYNUS
Scale: No Scale

- 1. ALL WORK ON THIS PROJECT SHALL BE DONE IN ACCORDANCE WITH THE CITY OF PALHAM, ALABAMA, ORDINANCES AND RESOLUTIONS.
- 2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF PALHAM, ALABAMA.
- 3. THE CONTRACTOR SHALL BE RESPONSIBLE FOR MAINTAINING ACCESS TO ALL ADJACENT PROPERTIES AT ALL TIMES.
- 4. THE CONTRACTOR SHALL BE RESPONSIBLE FOR PROTECTING ALL EXISTING UTILITIES AND STRUCTURES.
- 5. THE CONTRACTOR SHALL BE RESPONSIBLE FOR RESTORING THE SITE TO ITS ORIGINAL CONDITION OR BETTER.

Initials of parties
JH
[Signature]

PALHAM PARKWAY, LLC
112 CUMMINGS ROAD
PALHAM, ALABAMA 36568
Phone: 256-336-1111
Fax: 256-336-1112
www.palhamllc.com