

STATE OF ALABAMA       )  
                                      :  
COUNTY OF SHELBY       )

**EASEMENT AND USE RESTRICTIONS AGREEMENT**

THIS EASEMENT AND USE RESTRICTIONS AGREEMENT (this "Agreement") is made and entered into as of the 26th day of January, 2001 by and among S. W. SMYER, JR., a married man, INGRID FRANCES SMYER-DUBROW, an unmarried woman, and HARALD L. SMYER, a married man (collectively, "Seller"), INGRID FRANCES SMYER-DUBROW AND HARALD L. SMYER, who are sister and brother (collectively, the "Adjacent Property Owners"), INGRID FRANCES SMYER-DUBROW, HARALD L. SMYER and SIDNEY W. SMYER, III, an unmarried man (collectively, the "Hollybrook Owners"), and STONEGATE FARMS, LLC, an Alabama limited liability company ("Purchaser").

**RECITALS:**

Contemporaneously herewith, Seller has sold and conveyed to Purchaser the Property, as hereinafter defined, and Seller had retained ownership of the Retained Property, as hereinafter defined.

In connection with the sale of the Property by Seller to Purchaser, (a) Purchaser has agreed to grant certain easement rights over and upon the Property for the benefit of the Retained Property, the Hollybrook Lot, as hereinafter defined, and the Adjacent Property, as hereinafter defined, and (b) Purchaser, Seller, the Adjacent Property Owners and the Hollybrook Owners have each agreed to establish certain use restrictions for their respective properties as hereinafter provided.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller, the Adjacent Property Owners, the Hollybrook Owners and Purchaser do hereby agree as follows:

**ARTICLE I**

**DEFINITIONS**

As used in this Agreement, the following terms shall have the meanings set forth below, which meanings shall be applicable to both the singular and plural forms and tenses of such terms:

1.01    **Access Road**. The term "Access Road" shall mean and refer to that certain paved access roadway to be constructed by Purchaser on the Access Road Easement Property providing ingress to and egress from Shelby County Highway 41 (also known as Dunnavant Valley Road) and the Adjacent Property.

1.02    **Access Road Easement Property**. The term "Access Road Easement Property" shall mean and refer to that certain real property situated in Shelby County, Alabama

owned by Purchaser and constituting part of the Property which is more particularly described in Exhibit A attached hereto and incorporated herein by reference.

1.03 **Adjacent Property**. The term “Adjacent Property” shall mean and refer to that certain real property situated in Shelby County, Alabama owned by the Adjacent Property Owners which is more particularly described in Exhibit B attached hereto and incorporated herein by reference.

1.04 **Hollybrook Lot**. The term “Hollybrook Lot” shall mean and refer to that certain real property situated in Shelby County, Alabama owned by the Hollybrook Owners which is more particularly described in Exhibit C attached hereto and incorporated herein by reference.

1.05 **Hollybrook Lot Driveway**. The term “Hollybrook Lot Driveway” shall mean and refer to that certain real property situated in Shelby County, Alabama owned by Purchaser and constituting part of the Property which is more particularly described in Exhibit D attached hereto and incorporated herein by reference.

1.06 **Lot**. The term “Lot” shall mean and refer to any subdivided lot within the Property, the Adjacent Property, the Retained Property, the Hollybrook Lot and shall specifically include the Hollybrook Lot, Smyer Lake Lot 1, Smyer Lake Lot 2, Smyer Lake Lot 3 and any additional lots resulting from the subdivision thereof.

1.07 **Property**. The term “Property” shall mean and refer to that certain real property situated in Shelby County, Alabama owned by Purchaser which is more particularly described in Exhibit E attached hereto and incorporated herein by reference which has been conveyed contemporaneously herewith by Seller to Purchaser.

1.08 **Retained Property**. The term “Retained Property” shall mean and refer, collectively, to Smyer Lake Lot 1, Smyer Lake Lot 2 and Smyer Lake Lot 3.

1.09 **Retained Property Driveway Easement**. The term “Retained Property Driveway Easement” shall mean and refer to that certain real property situated in Shelby County, Alabama owned by Purchaser and constituting part of the Property which is more particularly described in Exhibit F attached hereto and incorporated herein by reference.

1.10 **Road Maintenance Costs**. The term “Road Maintenance Costs” shall mean and refer to the actual maintenance and repair costs incurred by Purchaser (or any owners’ association for the Property established by Purchaser) in maintaining and repairing the Access Road, as provided in Section 2.08 below, and any Limited Access Devices, common entrance features such as landscaping and lighting, and any streetlights within the Access Road Easement Property, including the establishment of a reasonable reserve amount for future capital improvements to the Access Road.

1.11 **Smyer Lake Lot 1**. The term “Smyer Lake Lot 1” shall mean and refer to that certain real property situated in Shelby County, Alabama owned by Seller which is more particularly described in Exhibit G attached hereto and incorporated herein by reference.



1.12 **Smyer Lake Lot 2.** The term “Smyer Lake Lot 2” shall mean and refer to that certain real property situated in Shelby County, Alabama owned by Seller which is more particularly described in Exhibit H attached hereto and incorporated herein by reference.

1.13 **Smyer Lake Lot 3.** The term “Smyer Lake Lot 3” shall mean and refer to that certain real property situated in Shelby County, Alabama owned by Seller which is more particularly described in Exhibit I attached hereto and incorporated herein by reference.

1.14 **Smyer Lake Road.** The term “Smyer Lake Road” shall mean and refer to that portion of that certain private roadway known as “Smyer Lake Road” which is more particularly shown on the subdivision plat entitled Mountain View Lake Subdivision, 2nd Sector, as recorded in Map Book 3, Page 150 in the Office of the Judge of Probate of Shelby County, Alabama, as such subdivision plat may be amended from time to time.

1.15 **Utility Lines.** The term “Utility Lines” shall mean and refer to any and all publicly or privately owned and operated electrical, gas, telephone, water and storm sewer systems, lines, pipes, drains, conduit, equipment, machinery and other apparatus and appurtenances of any nature and any and all master television and/or cable and communication systems and appurtenances. All Utility Lines constructed or installed in or upon any portion of the Property shall be installed below ground.

## ARTICLE II

### **CONSTRUCTION OF ACCESS ROAD AND UTILITY LINES AND GRANT OF EASEMENTS**

#### **2.01 Construction of Access Road and Utility Lines.**

(a) Purchaser, at Purchaser’s sole cost and expense, shall construct, install and complete the Access Road on and within the Access Road Easement Property on or before October 31, 2003 (the “Completion Date”) providing ingress to and egress from Shelby County, Alabama Highway 41 (also known as Dunnavant Valley Road) to a point on the common boundary of the Property and the Adjacent Property. The Access Road shall generally be constructed in accordance with the requirements and specifications of Shelby County, Alabama, as described in Exhibit J attached hereto and incorporated herein by reference. Seller, the Adjacent Property Owners, the Hollybrook Owners and Purchaser acknowledge and agree that the development of the Property is planned to be a “large lot subdivision”, as defined in the Shelby County, Alabama Subdivision Regulations in effect as of the date of this Agreement and, accordingly, no curbing or gutters should be required for the Access Road.

(b) In addition, Purchaser, at Purchaser’s sole cost and expense, shall construct, install and complete the Utility Lines on or within the Access Road Easement Property on or before the Completion Date in order that utility services through the Utility Lines will be available at a point on the common boundary of the Property and the Adjacent Property. In connection with the construction of the Utility Lines within the Access Road Easement Property, gas utility service may be provided to the Property in the sole and absolute discretion of Purchaser; provided, however, that if Purchaser elects to provide gas utility service to any portion of the Property, then Purchaser shall be required to provide gas service to the remainder of the Property and to a point on the common

boundary of the Adjacent Property by constructing gas service lines within the Access Road Easement Property.

(c) The Completion Date shall be subject to reasonable extension as a result of acts of God or the occurrence of other events or circumstances beyond the control of Purchaser.

## **2.02 Access Road Easement.**

(a) Subject to the terms and provisions of Sections 2.06(a) and 2.06(b) below, Purchaser grants to Seller, the Adjacent Property Owners, the Hollybrook Owners and their respective heirs, executors, administrators, successors and assigns, a permanent, perpetual and non-exclusive easement over, across, through, under and upon the Access Road Easement Property for the purposes of providing ingress to and egress from Shelby County, Alabama Highway 41 (also known as Dunnavant Valley Road) and the Retained Property, the Hollybrook Lot and the Adjacent Property via use of the Access Road. The easement granted herein shall also include the right to construct, install, operate, maintain, repair and replace from time to time on or within the Access Road Easement Property asphalt pavement for a roadway or driveway on that portion of the Access Road Easement Property situated directly adjacent to (i) the Retained Property Driveway Easement in order to provide vehicular and pedestrian ingress and egress between the Access Road and the Retained Property Driveway Easement and (ii) the Hollybrook Driveway Easement in order to provide vehicular and pedestrian ingress and egress between the Access Road and the Hollybrook Driveway Easement.

(b) The easements granted pursuant to Section 2.02(a) above for the use of the Access Road Easement Property shall be limited to the Retained Property, the Hollybrook Lot and the Seller's Adjacent Property. No portion of the Adjacent Property, the Retained Property or the Hollybrook Lot may be utilized to provide access to and from the Access Road and any other real property situated adjacent to or adjoining the Retained Property, the Hollybrook Lot or the Adjacent Property.

**2.03 Utility Easement.** Purchaser grants to Seller, the Adjacent Property Owners, the Hollybrook Lot Owners and their respective heirs, executors, administrators, successors and assigns, a permanent, perpetual and non-exclusive easement and right to connect and tie-onto any of the Utility Lines situated within the Access Road Easement Property in order to provide utility services to the Adjacent Property, the Retained Property and the Hollybrook Lot, but only to the extent permitted by the then applicable rules and regulations of such utility providers. The easement granted herein shall include the right to construct, install, operate, maintain, repair and replace from time to time on or within the Access Road Easement Property any and all underground lines, pipes, wiring, conduit or other apparatus necessary or required in order to obtain utility service from any of the Utility Lines situated within the Access Road Easement Property.

**2.04 Retained Property Driveway Easement.** Subject to the terms and provision of Sections 2.06(a) and 2.06(b) below, Purchaser grants to Seller and Seller's respective heirs, executors, administrators, successors and assigns, a permanent, perpetual and non-exclusive easement over, across, through, under and upon the Retained Property Driveway Easement for the purposes of (i) providing vehicular and pedestrian ingress to and egress from the Access Road and the Retained Property, (ii) constructing, installing, operating, maintaining and replacing thereon



roadways or driveways providing both vehicular and pedestrian ingress to and egress from the Access Road and the Retained Property and (iii) constructing, installing, operating, maintaining, repairing and replacing from time to time thereon Utility Lines and Limited Access Devices, as defined in Section 2.07 below. Seller and Seller's respective heirs, executors, administrators, successors and assigns shall be solely responsible for maintaining, repairing and replacing, to the extent necessary, any and all driveways, roadways, Limited Access Devices and Utility Lines constructed or installed on or within the Retained Property Driveway Easement.

**2.05 Hollybrook Driveway Easement.** Subject to the terms and provision of Section 2.06(a) below, Purchaser grants to the Hollybrook Owners and their respective heirs, executors, administrators, successors and assigns, a permanent, perpetual and non-exclusive easement over, across, through, under and upon the Hollybrook Driveway for the purposes of (i) providing vehicular and pedestrian ingress to and egress from the Access Road and the Hollybrook Lot (ii) constructing, installing, operating, maintaining and replacing thereon roadways or driveways providing both vehicular and pedestrian ingress to and egress from the Access Road and the Hollybrook Lot and (iii) constructing, installing, operating, maintaining, repairing and replacing from time to time thereon Utility Lines and Limited Access Devices, as defined in Section 2.07 below. The Hollybrook Owners and their respective heirs, executors, administrators, successors and assigns shall be solely responsible for maintaining, repairing and replacing, to the extent necessary, any and all driveways, roadways, Limited Access Devices and Utility Lines constructed or installed on or within the Hollybrook Driveway.

**2.06 Relocation of Easements.**

(a) Purchaser reserves the right, in its sole and absolute discretion, to relocate the Access Road Easement Property to another location on the Property so long as the proposed location of such relocated Access Road is approved in writing by Seller, the Hollybrook Owners and the Adjacent Property Owners, which approval shall not be unreasonably withheld or delayed. Furthermore, Purchaser reserves the right, in its sole and absolute discretion, to relocate the Retained Property Driveway Easement and the Hollybrook Driveway to another location on the Property so long as the proposed location of the same is approved in writing by the then owners of the Retained Property and the then owners of the Hollybrook Lot, respectively. To the extent Purchaser elects to relocate either the Access Road Easement Property, the Retained Property Driveway Easement or the Hollybrook Driveway then, in addition to the written approvals required from the respective parties as provided above, such relocation shall also be subject to the following additional terms and conditions:

(i) The Access Road Easement Property shall at all times be at least 60 feet in width (unless a larger right-of-way is required by Shelby County, Alabama). The Retained Property Driveway Easement and the Hollybrook Driveway shall at all times be at least 60 feet in width;

(ii) Prior to the relocation of the Access Road Easement Property, the Retained Property Driveway Easement or the Hollybrook Driveway, as the case may be, Purchaser shall, at Purchaser's sole cost and expense, construct, install and replace any and all improvements, including, without limitation, driveways, roadways, Limited Access Devices and any Utility Lines which the then owners of

the Adjacent Property, the Retained Property or the Hollybrook Lot, respectively, have previously constructed within the Access Road Easement Property, the Retained Property Driveway Easement or the Hollybrook Driveway, respectively;

(iii) The exercise of the relocation rights granted herein shall not unreasonably interfere with either pedestrian or vehicular ingress to or egress from the Adjacent Property, the Retained Property or the Hollybrook Lots or any utility services then being provided to the Adjacent Property, the Retained Property or the Hollybrook Lot; and

(iv) Purchaser shall grant to Seller, the Adjacent Property Owners, the Hollybrook Lot Owners and their respective heirs, executors, administrators, successors and assigns permanent, perpetual and non-exclusive easements over, across, through, under and upon those portions of the Property upon which the relocated Access Road Easement Property, Retained Property Driveway Easement or Hollybrook Driveway, as the case may be, are to be relocated, and this Agreement shall be amended accordingly.

(b) Notwithstanding anything provided in this Agreement to the contrary, if, at any time after the date of this Agreement, the then owner of Smyer Lake Lot 2 or Smyer Lake Lot 3 is granted a valid, legal and binding easement providing access to Smyer Lake Lot 2 or Smyer Lake Lot 3 via Smyer Lake Road, then those portions of the Smyer Lake Lot 2 or Smyer Lake Lot 3 which are accessed via Smyer Lake Road will no longer be entitled to utilize the Access Road and the Retained Property Driveway Easement for access purposes (and the then owners of those portions of the Smyer Lake Lot 2 and Smyer Lake Lot 3 shall vacate any rights to use the Access Road and the Retained Property Driveway Easement). Furthermore, if, at the time construction of a residential dwelling unit is commenced on Smyer Lake Lot 1, Smyer Lake Lot 1 will not utilize the Access Road for access purposes, then the owner of Smyer Lake Lot 1 shall not be obligated to pay any portion of the Road Maintenance Costs and such owner shall vacate any rights to use the Access Road.

(c) Notwithstanding anything provided in this Agreement to the contrary, if, at any time after the date of this Agreement, any portion of the Adjacent Property is provided with alternative access to Shelby County Highway 41 (also known as Dunnivant Valley Road) via another roadway which satisfies the Shelby County, Alabama Subdivision Regulations for "large lot subdivisions", as defined in the Shelby County, Alabama Subdivision Regulations in effect as of the date of this Agreement, then those portions of the Adjacent Property which are provided with such alternative access will no longer be entitled to utilize the Access Road for access purposes (and the then owners of those portions of the affected portions of the Adjacent Property shall vacate any rights to utilize the Access Road).

**2.07 Nature of Easements and Limited Access Devices.** The easements granted in this Agreement shall be and are covenants running with the Property, the Adjacent Property, the Retained Property and the Hollybrook Lot, respectively, and shall be binding upon and inure to the benefit of Seller, the Adjacent Property Owners, the Hollybrook Owners and Purchaser and their respective heirs, executors, administrators, personal representatives, successors and assigns, forever. Seller, the Adjacent Property Owners, the Hollybrook Owners and Purchaser covenant and agree that



no fences or other obstructions shall be erected or permitted on, across or upon the Access Road Easement Property; provided, however, that (a) Purchaser shall have the right, at its sole cost and expense, to control access onto the Access Road Easement Property from Shelby County, Alabama Highway 41 (also known as Dunnavant Valley Road) by installing and maintaining either guardhouses, gates or other security devices (collectively, "Limited Access Devices") at any location on the Access Road Easement Property and (b) Seller, the Adjacent Property Owners and the Hollybrook Owners and their respective heirs, executors, administrators, personal representatives, successors and assigns, may, at their sole cost and expense, construct, erect, install and maintain Limited Access Devices on any portion of the Adjacent Property, the Retained Property Driveway Easement or the Hollybrook Lot Driveway owned by such parties. To the extent Purchaser elects, in its sole discretion, to control or limit access and use of the Access Road Easement Property by use of any Limited Access Devices, then Purchaser (i) does hereby grant to Seller, the Adjacent Property Owners and the Hollybrook Owners and their respective heirs, executors, administrators, personal representatives, successors and assigns, a permanent, perpetual and non-exclusive easement over, across, through and upon all such Limited Access Devices and (ii) shall provide to Seller, the Adjacent Property Owners and the Hollybrook Owners and their respective heirs, executors, administrators, personal representatives, successors and assigns, any access codes, cards, keys, stickers, permits or passes necessary in order to gain access through any such Limited Access Devices. All vehicular and pedestrian traffic utilizing the Access Road shall be subject to reasonable traffic rules, regulations and enforcement procedures which may be established and amended from time to time by Purchaser, which rules and regulations shall be applied on a uniform, non-discriminatory basis to all persons utilizing the Access Road. In no event shall such traffic rules and regulations impose any fee or charge (other than as specified in Section 2.08 below) on the owners of the Retained Property, the Hollybrook Lot or the Adjacent Property or any of their respective guests, invitees or family members for the use of the Access Road.

## **2.08 Maintenance of Access Road.**

(a) Purchaser shall at all times maintain the Access Road in good condition and repair, which obligation shall include, without limitation, paying all Road Maintenance Costs with respect to the Access Road (subject to the reimbursement obligations set forth in Sections 2.08(b) and 2.08(c) below). Purchaser reserves the right in its sole and absolute discretion to dedicate any portion of the Access Road to any governmental agency or authority as a public road in which event the remaining terms and provisions of this Section 2.08 shall not longer be applicable to those portions of the Access Road which become public roadways. The rights reserved by Purchaser pursuant to this Section 2.08(a) may be exercised by Purchaser without any further consents or approvals of the owners of any portion of the Retained Property, the Hollybrook Lot, the Adjacent Property or any of the Lots within the Property. Notwithstanding the foregoing, Seller, the Hollybrook Owners and the Adjacent Property Owners, for themselves and their respective heirs, executors, administrators, successors and assigns, covenant and agree to execute and deliver to Purchaser any and all documents, instruments or agreements which may be reasonably necessary or required in order to dedicate the Access Road or any portion thereof as a public roadway to any governmental authority.

(b) Following Purchaser's completion of construction of the Access Road to the Adjacent Property and the subdivision of any portion of the Adjacent Property into subdivided Lots which utilize the Access Road for access purposes, then the owners of those Lots within any portion

of the Adjacent Property which utilize the Access Road for access purposes shall pay their respective Prorata Share, as herein defined, of the Road Maintenance Costs incurred by Purchaser with respect to the Access Road. As used herein, the term "Prorata Share" shall mean the product of the Road Maintenance Costs for the then applicable calendar year multiplied by a fraction, the numerator of which shall be the gross acreage of the applicable Lot served by the Access Road and the denominator of which shall be the total gross acreage of all of the Property and any other real property provided access via the Access Road; provided, however, that (i) no portion of the Hollybrook Lot, Smyer Lake Lot 1, Smyer Lake Lot 2 or Smyer Lake Lot 3 shall be included in such calculation unless such Lot is paying Road Maintenance Costs pursuant to the provisions of Section 2.08(c) below, (ii) the Access Road Easement Property, any other roadways within either the Property, the Adjacent Property, the Retained Property or the Hollybrook Lot and any lakes or parks situated within the Property, the Adjacent Property, the Retained Property or the Hollybrook Lot shall be excluded from the payment of Road Maintenance Costs and the calculation of the acreage which is provided access via the Access Road, (iii) if, pursuant to the terms and provisions of Section 2.06(b) above, access to any portion of Smyer Lake Lot 1, Smyer Lake Lot 2 or Smyer Lake Lot 3 is provided via Smyer Lake Road, then the applicable portion of Smyer Lake Lot 1, Smyer Lake Lot 2 or Smyer Lake Lot 3 which is accessed via Smyer Lake Road shall not be obligated to pay any portion of the Road Maintenance Costs and shall not be included in the calculation of the acreage which is provided access via the Access Road and (iv) if, pursuant to the terms and provisions of Section 2.06(b) above, Smyer Lake Lot 1 does not utilize the Access Road for access purposes, then Smyer Lake Lot 1 shall not be included in the calculation of the acreage which is provided access via the Access Road. To the extent the obligation to pay a Prorata Share of the Road Maintenance Costs arises at any time other than on the first day of January, then the Prorata Share payable by such Lot owner shall be prorated for the first year based on the number of days remaining in the applicable calendar year.

(c) At such time as construction of a residential dwelling unit is commenced on Smyer Lake Lot 1, Smyer Lake Lot 2, Smyer Lake Lot 3 or the Hollybrook Lot, then the owner of the Lot upon which such residential dwelling unit is being constructed shall be obligated to pay such owner's respective Prorata Share of the Road Maintenance Costs, which Prorata Share shall be determined by dividing the gross acreage of the Lot upon which such residential dwelling unit is being constructed by the total gross acreage of all portions of the Property and any other real property which utilize any portion of the Access Road for access purposes (subject to the limitations set forth in Section 2.08(b) (i) through (iv) above). Notwithstanding anything provided herein to the contrary, in the event the provisions of Section 2.06(b) above are applicable to any portions of Smyer Lake Lot 1, Smyer Lake Lot 2 or Smyer Lake Lot 3, then those portions of the Smyer Lake Lot 1, Smyer Lake Lot 2 or Smyer Lake Lot 3 so affected shall no longer be obligated to pay any portion of the Road Maintenance Costs.

(d) On or before December 31 of each year, Purchaser shall prepare and deliver to the owners of all real property utilizing any portion of the Access Road for access purposes an annual budget for the contemplated Road Maintenance Costs for the Access Road for the immediately succeeding calendar year as well as a reconciliation of the actual versus budgeted Road Maintenance Costs incurred by Purchaser for the current calendar year. Each annual budget shall contain line-item amounts for all items of expense which will constitute Road Maintenance Costs for the upcoming year and establish on a gross acreage basis the amount payable per gross acre for



Road Maintenance Costs (calculated in accordance with the provisions of Sections 2.08(b) above). To the extent the actual Road Maintenance Costs incurred by Purchaser in any calendar year:

(i) Exceed the total amount budgeted for such Road Maintenance Costs in the then applicable annual budget, then Purchaser shall prepare and deliver to the owners of all real property utilizing any portion of the Access Road for access purposes a revised budget for such Road Maintenance Costs and the revised Prorata Share due from each such owner (calculated in accordance with the provisions of Section 2.08(b) above); or

(ii) Are less than the amount set forth in the then applicable annual budget for such Road Maintenance Costs, then the owners of all real property utilizing any portion of the Access Road for access purposes shall receive a credit against the Road Maintenance Costs due and payable in the immediately succeeding calendar year(s) (which credit shall be based on the respective Prorata Share of such savings calculated in accordance with the provisions of Section 2.08(b) above).

(e) To the extent the owner of any Lot fails to pay his respective Prorata Share of the Road Maintenance Costs for the applicable calendar year (or any additional Road Maintenance Costs set forth in any revised budget prepared by Purchaser pursuant to Section 2.08(d) above) within thirty (30) days following written notice of the due date of the same, then (i) such owners shall be deemed in default under this Agreement and (ii) the unpaid portion of such Prorata Share shall bear interest at the rate of twelve percent (12%) per annum from and after the thirtieth day from the due date of the same until the entire unpaid portion of such Prorata Share has been paid in full. Furthermore, Purchaser shall have the right to enforce the obligation of any such defaulting Lot owner by an action at law or in equity and any and all reasonable costs and expenses, including reasonable attorneys' fees, incurred by Purchaser in connection therewith shall be payable by such defaulting owner. The obligations set forth in this Section 2.08 obligating the owner of each Lot to pay his respective Prorata Share of the Road Maintenance Costs, together with interest thereon as provided above and any and all costs of collecting the same, including reasonable attorneys' fees (collectively, the "Access Road Charges"), shall be a charge on and shall be a continuing lien (enforceable in the same manner as a mortgage, with power of sale) upon each applicable Lot within the Property, the Retained Property, the Hollybrook Lot and the Adjacent Property.

(f) Notwithstanding anything provided herein to the contrary, the lien for Access Road Charges created pursuant to Section 2.08(e) above is and shall be subordinate to the lien of any *bona fide* mortgage, but only to the extent that such mortgage is recorded in the Office of the Judge of Probate of Shelby County, Alabama prior to the filing of a claim of lien by Purchaser ( or any owners' association for the Property to whom Purchaser has assigned its rights hereunder). When the holder of any mortgage exercises its foreclosure rights provided in its mortgage and acquires title to or sells to a third party its interest in any Lot, then such mortgagee or its purchaser or transferee at such foreclosure sale shall (i) not be liable for the then unpaid portion of any Access Road Charges incurred prior to the date of transfer or acquisition of title by foreclosure so long as the mortgage was recorded in the aforesaid Probate Office prior to the filing of a claim of lien by Purchaser ( or any owners' association for the Property to whom Purchaser has assigned its rights hereunder), but (ii) be liable for all Access Road Charges levied or assessed to such Lot from and after the date of such foreclosure sale. The foregoing shall not relieve the owner of any Lot which

has been mortgaged (and which mortgage may have been foreclosed) from the personal obligation to pay all Access Road Charges and Purchaser (or any owners' association for the Property to whom Purchaser has assigned its rights hereunder) shall have the right to pursue all rights and remedies against a defaulting Owner notwithstanding the foreclosure of a mortgage on such owner's Lot. Notwithstanding the foregoing, Purchaser (or any owners' association to whom Purchaser may transfer and assign its rights hereunder) may at any time, either before or after the mortgaging of any Lot, waive, release or quitclaim in whole or in part its rights to any Access Road Charges due and payable by any Lot pursuant to the terms and provisions of this Section 2.08.

(g) Purchaser shall have the right, in its sole and absolute discretion, to transfer and assign its rights and obligations under this Section 2.08 to any owners' association established by Purchaser for the Property so long as such owners' association assumes all of the obligations of Purchaser under this Section 2.08.

### ARTICLE III

#### USE RESTRICTIONS

3.01 **Use Restrictions with Respect to Property.** The following use restrictions shall be applicable to the Property: (a) the Property shall be restricted to use for single-family residential uses only, (b) those portions of the Property situated in the East ½ of the Southwest ¼ of Section 24 and the East ½ of the Northwest ¼ of Section 25, Township 18 South, Range 1 West, Shelby County, Alabama, which abut any portion of the 100-foot buffer area lying adjacent to Smyer Lake Road and within 100-feet of the edge of the water of the westernmost portion of Lower Twin Lake shall not be subdivided, sold or conveyed in lots or tracts of land which are less than ten (10) acres in total size unless that certain Agreement dated March 19, 1993 and recorded as Instrument #1993-08112 in the Office of the Judge of Probate of Shelby County, Alabama and that certain unrecorded Agreement dated March, 1993 between Seller and Shelby Lake Corporation are modified or amended to reduce the width of the 100-foot buffer from the edge of the water of said Lower Twin Lake, and (c) those portions of the Property situated in the West ½ of the Northeast ¼ of Section 25 and the West ½ of the Southeast ¼ of Section 24, Township 19 South, Range 1 West, Shelby County, Alabama which abut any portion of the 100-foot buffer area lying adjacent to Smyer Lake Road and the southwestern boundary of the Hollybrook Lot shall not be subdivided, sold or conveyed in lots or tracts of land which are less than five (5) acres in total size. The terms and provisions of this Section 3.01 shall constitute and be covenants running with the land which should be binding upon and inure to the benefit of the parties hereto, forever; provided, however, that the terms and provisions of this Section 3.01 may be amended at any time and from time to time by the written consent and approval of only Purchaser and Seller without any requirement that the consent or approval of the Adjacent Property Owners, the Hollybrook Owners or any third party owners of any of the Lots within the Property, the Retained Property, the Hollybrook Lot or the Adjacent Property be obtained.

3.02 **Use Restrictions with Respect to Adjacent Property.** With respect to that portion of the Adjacent Property which is provided access via the Access Road, no portion thereof may be subdivided, sold or conveyed in lots or tracts which are less than three (3) acres in size; provided, however, that (a) the foregoing restrictions shall apply only to those portions of the Adjacent Property which are provided with access via the Access Road and (b) if the provisions of



Section 2.06(c) above are applicable to any portion of the Adjacent Property, then the foregoing restrictions shall automatically expire and terminate with respect to those portions of the Adjacent Property which are accessed by means other than the Access Road. The terms and provisions of this Section 3.02 shall be and are covenants running with the land and shall be binding upon and inure to the benefit of Purchaser and the Adjacent Property Owners and their respective heirs, executors, administrators, personal representatives, successors and assigns, forever ; provided, however, that the terms and provisions of this Section 3.01 may be amended at any time and from time to time by the written consent and approval of only Purchaser and Seller without any requirement that the consent or approval of the Adjacent Property Owners, the Hollybrook Owners or any third party owners of any of the Lots within the Property, the Retained Property, the Hollybrook Lot or the Adjacent Property be obtained.

**3.03    Use Restrictions with Respect to Retained Property and Hollybrook Lot.**

The Retained Property and Hollybrook Lot shall be used for single-family residential uses only and no portion thereof may be subdivided, re-subdivided, sold or conveyed in lots or tracts which are less than five (5) acres in size. The terms and provisions of this Section 3.03 shall be and are covenants running with the land and shall be binding upon and inure to the benefit of Purchaser, Seller and the Hollybrook Owners and their respective heirs, executors, administrators, personal representatives, successors and assigns, forever ; provided, however, that the terms and provisions of this Section 3.01 may be amended at any time and from time to time by the written consent and approval of only Purchaser and Seller without any requirement that the consent or approval of the Adjacent Property Owners, the Hollybrook Owners or any third party owners of any of the Lots within the Property, the Retained Property, the Hollybrook Lot or the Adjacent Property be obtained.

**ARTICLE IV**

**MISCELLANEOUS**

**4.01    Notices.** All notices required or permitted hereunder shall be in writing and shall be served on the parties hereto at the following addresses:

|  |   |
|--|---|
| If to Seller, the<br>Adjacent Property<br>Owners or Holly-<br>brook Owners | S. W. Smyer, Jr.<br>2118 First Avenue North<br>Birmingham, AL 35203   |
| If to Purchaser:   | Stonegate Farms, LLC<br>1000 Urban Center Drive, Suite 650<br>Vestavia Hills, Alabama 35242<br>Attention: Mark D. Elgin |

Any such notices shall be deemed to be sufficiently given or served upon any party hereto when either (a) sent by personal delivery to the address set forth above, (b) deposited in the United States Mail by certified mail, return receipt requested, postage prepaid and addressed as provided above or (c) deposited with a nationally recognized overnight delivery courier service (e.g., Federal Express or UPS) for next day delivery and addressed as set forth above. The above addresses may be changed by written notice to the other parties given in the manner set forth above.

4.02 **Captions.** Captions and headings contained in this Agreement are for convenience of reference only and shall not be used in the construction or interpretation of any provisions of this Agreement.

4.03 **Pronouns and Gender.** Whenever appropriate in this Agreement, personal pronouns shall be deemed to include all other genders and the singular shall be deemed to include the plural and vice versa.

4.04 **Binding Effect.** All of the terms and provisions contained in this Agreement shall be binding upon, inure to the benefit of and be enforceable by Seller, the Adjacent Property Owners, the Hollybrook Owners and Purchaser and their respective heirs, executors, administrators, personal representatives, successors and assigns.

4.05 **Partial Invalidity.** If any term, covenant, condition or provision of this Agreement or the application thereof to any person or circumstance shall ever be held to be invalid or unenforceable, then in each such event the remainder of this Agreement or the application of such term, covenant, condition or provision to any other person or any other circumstance (other than those as to which it shall be invalid or unenforceable) shall not be affected thereby and each term, covenant, condition and provision hereof shall remain valid and enforceable to the fullest extent permitted by law.

4.06 **No Agency or Partnership.** Nothing contained in this Agreement and no action by Seller, the Adjacent Property Owners, the Hollybrook Owners or Purchaser will be deemed or construed to create the relationship of principal and agent, or a partnership or a joint venture or any association between or among Seller, the Adjacent Property Owners, the Hollybrook Owners or Purchaser.

4.07 **Applicable Law.** This Agreement will be construed in accordance with the internal laws of the State of Alabama.

4.08 **No Dedication.** Nothing contained in this Agreement will be deemed to constitute a gift, grant or dedication of any portion of the real property described or referenced herein to the general public or for any public purpose whatsoever.

4.09 **Default.** In the event Seller, the Adjacent Property Owners, the Hollybrook Owners or Purchaser or any of their respective heirs, executors, administrators, personal representatives, successors or assigns default in the full and faithful performance of any of their respective obligations under this Agreement, then any non-defaulting party shall have the right to enforce this Agreement by either specific performance or by an action for monetary damages and any and all reasonable costs and expenses, including attorneys' fees, incurred by such non-defaulting party in connection therewith shall be paid in full by the defaulting party.

4.10 **No Homestead.** Each person constituting Seller, any of the Adjacent Property Owners and the Hollybrook Owners, by execution hereof, represents and warrants that the Retained Property, the Adjacent Property and the Hollybrook Lot, respectively, does not constitute the homestead of such person or his or her respective spouse.




4.11 **Amendments.** Except as otherwise provided to the contrary in Sections 3.01, 3.02 and 3.03 above, this Agreement may be amended or modified only by a written instrument executed by Seller, the Adjacent Property Owners, the Hollybrook Owners and Purchaser.

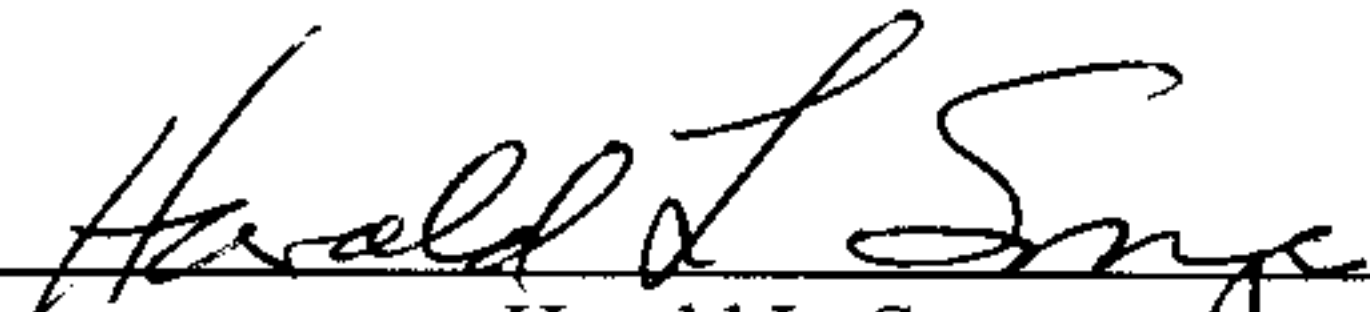
4.12 **Time.** Time is of the essence in the performance of the obligations of each party to this Agreement.

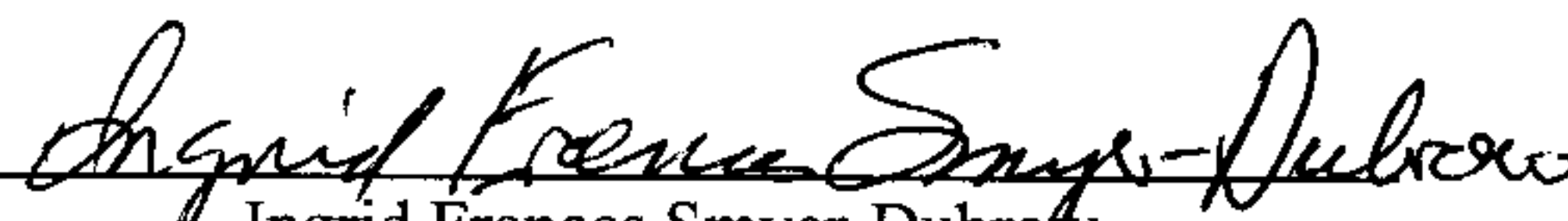
4.13 **Entire Agreement.** This Agreement constitutes the entire and complete agreement between the parties hereto with respect to the subject matter hereof and supersedes any prior oral or written agreements or understandings between the parties hereto with respect to the subject matter hereof. It is expressly agreed that there are no verbal understandings or agreements which, in any way, change the terms, covenants and conditions set forth herein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.


**SELLER:**


  
\_\_\_\_\_  
S. W. Smyer, Jr.

  
\_\_\_\_\_  
Harald L. Smyer,  
by S. W. Smyer, Jr., as attorney-in-fact

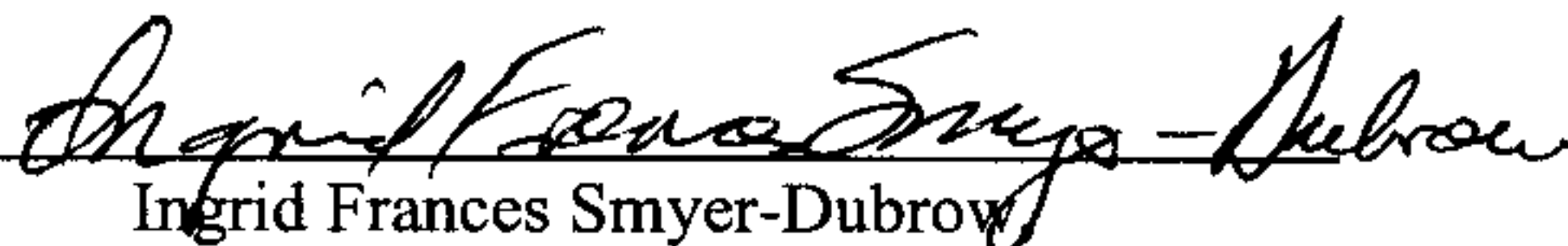
  
\_\_\_\_\_  
Ingrid Frances Smyer-Dubrow  
by S. W. Smyer, Jr., as attorney-in-fact

**ADJACENT PROPERTY OWNERS:**

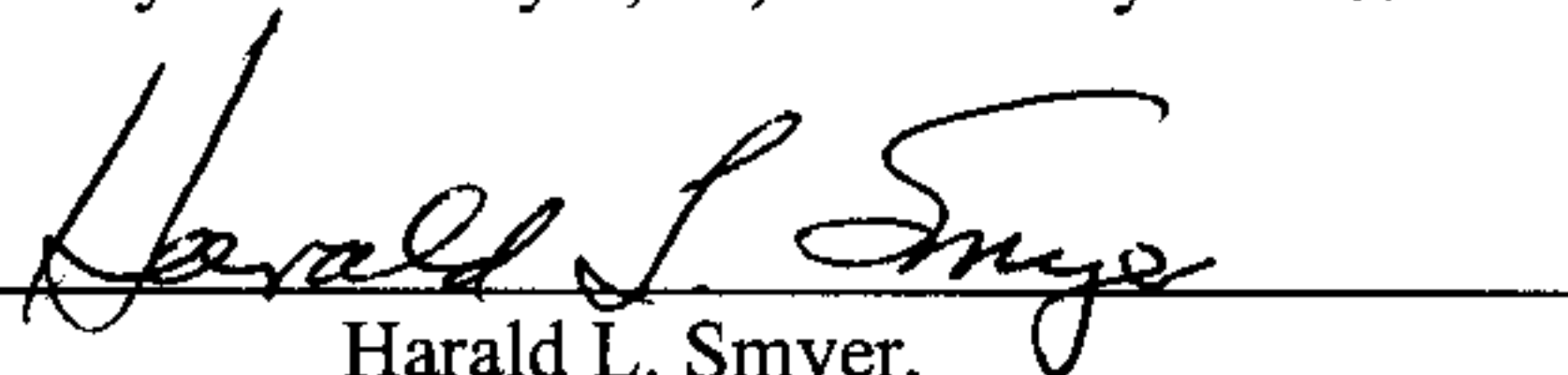
  
\_\_\_\_\_  
Ingrid Frances Smyer-Dubrow  
by S. W. Smyer, Jr., as attorney-in-fact

  
\_\_\_\_\_  
Harald L. Smyer,  
by S. W. Smyer, Jr., as attorney-in-fact

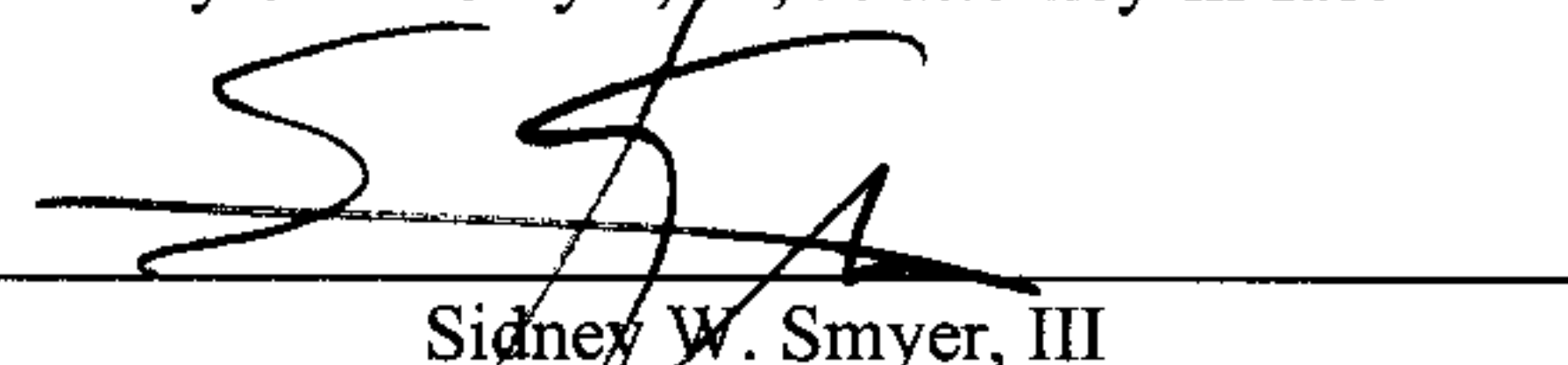
**HOLLYBROOK OWNERS:**

  
Ingrid Frances Smyer-Dubrow

by S. W. Smyer, Jr., as attorney-in-fact

  
Harald L. Smyer,

by S. W. Smyer, Jr., as attorney-in-fact

  
Sidney W. Smyer, III

**PURCHASER:**

**STONEGATE FARMS, LLC**, an Alabama limited liability company

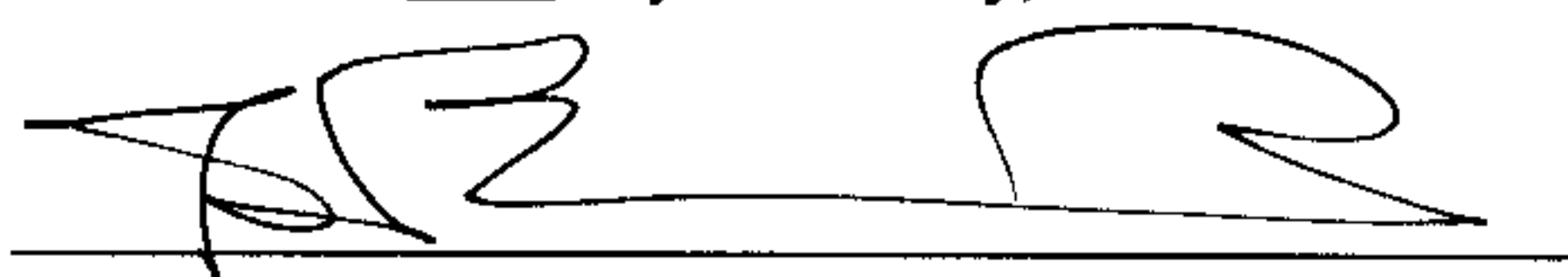
By: **STONEGATE PROJECTS (ALABAMA), LLC**, an Alabama limited liability company, Its Sole Member

By:   
Its: Manager

STATE OF ALABAMA                    )  
  :  
JEFFERSON COUNTY                    )

I, the undersigned, a notary public in and for said county in said state, hereby certify that S. W. Smyer, Jr., a married man, whose name 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 executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 26th day of January, 2001.



Notary Public

My commission expires: 9/8/2001

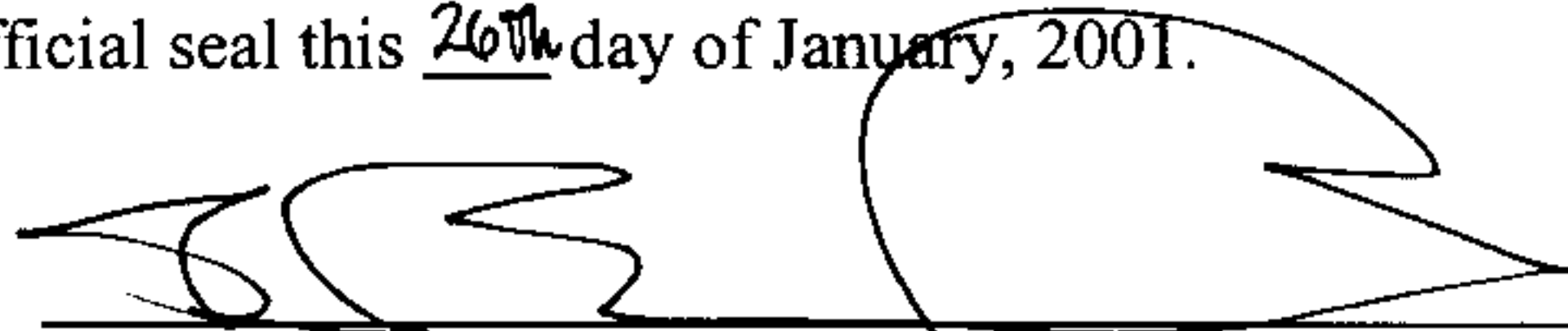
[NOTARIAL SEAL]



STATE OF ALABAMA                    )  
   :  
JEFFERSON COUNTY                    )

I, the undersigned, a notary public in and for said county in said state, hereby certify that S. W. Smyer, Jr., as attorney-in-fact for Ingrid Frances Smyer-Dubrow, an unmarried woman, whose name 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 attorney-in-fact, executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 26<sup>th</sup> day of January, 2001.

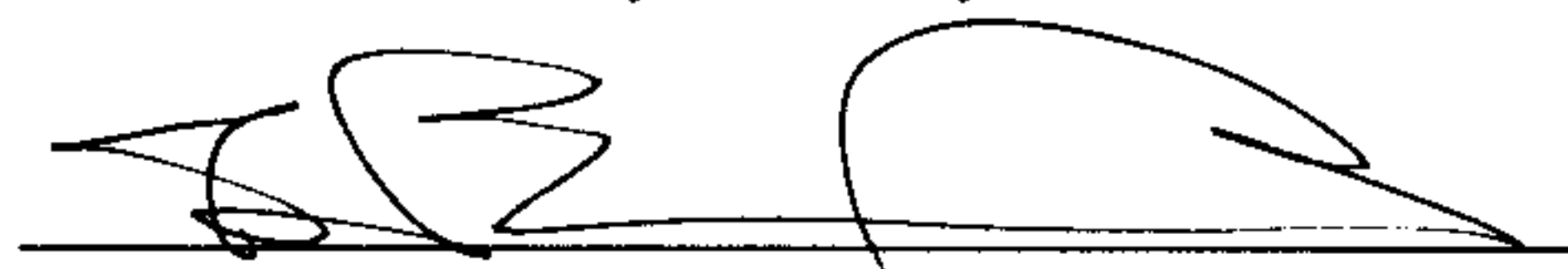
  
\_\_\_\_\_  
Notary Public  
My commission expires: 9/8/2001

[NOTARIAL SEAL]

STATE OF ALABAMA                    )  
   :  
JEFFERSON COUNTY                    )

I, the undersigned, a notary public in and for said county in said state, hereby certify that S. W. Smyer, Jr., as attorney-in-fact for Harald L. Smyer, a married man, whose name 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 attorney-in-fact, executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 26<sup>th</sup> day of January, 2001.

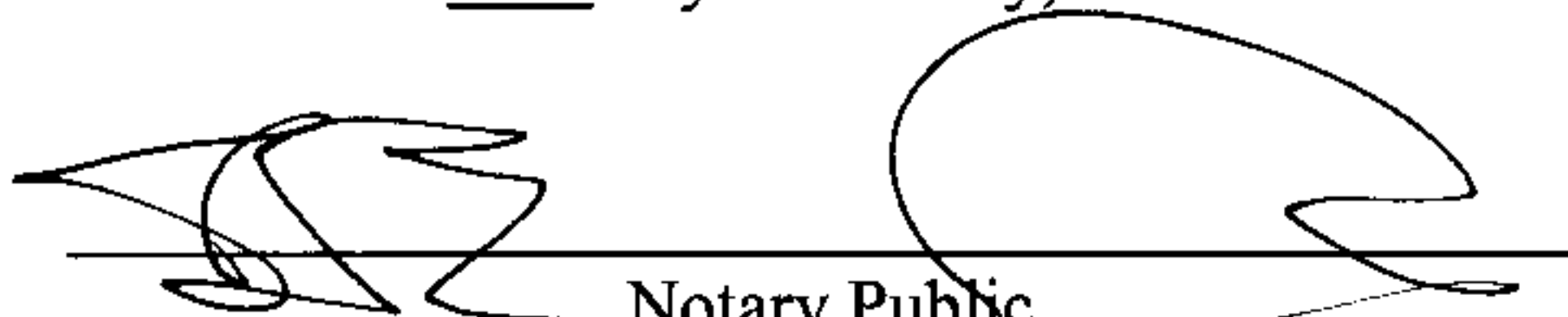
  
\_\_\_\_\_  
Notary Public  
My commission expires: 9/8/2001

[NOTARIAL SEAL]

STATE OF ALABAMA                    )  
  :  
JEFFERSON COUNTY                 )

I, the undersigned, a notary public in and for said county in said state, hereby certify that Sidney W. Smyer, III, an unmarried man, whose name 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 executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 26th day of January, 2001.

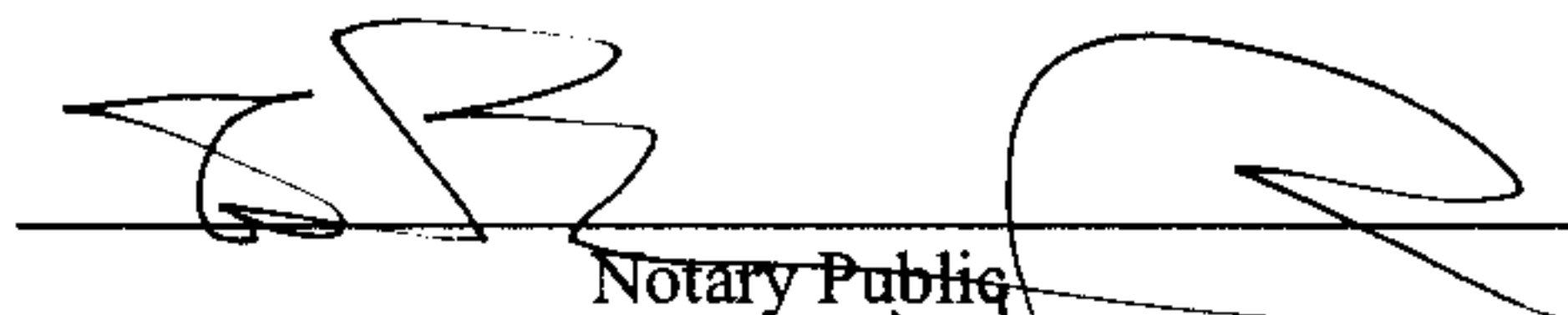
  
\_\_\_\_\_  
Notary Public  
My commission expires: 9/8/2001

[NOTARIAL SEAL]

STATE OF ALABAMA                    )  
  :  
JEFFERSON COUNTY                 )

I, the undersigned, a notary public in and for said county in said state, hereby certify that Mark D. Elgin, whose name as Manager of Stonegate Projects (Alabama), LLC, an Alabama limited liability company, as the Sole Member of Stonegate Farms, 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 limited liability company in its capacity as the Sole Member of Stonegate Farms, LLC.

Given under my hand and official seal this 26th day of January, 2001.

  
\_\_\_\_\_  
Notary Public  
My commission expires: 9/8/2001

[NOTARIAL SEAL]

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 Access Road Easement Property**

## Access Road Easement

A parcel of land situated in the SE ¼ of Section 23, the S ½ of Section 24, the N ½ of Section 25, Township 18 South, Range 1 West, and the West ½ of Section 19 Township 18 South, Range 1 East, Shelby County, Alabama, and being more particularly described as follows:

A strip of land 60 feet wide, 30 feet wide on both sides of, and parallel and contiguous to the following described centerline; Commence at the Westernmost corner of Lot 1 of the Stonegate Realty Subdivision, as recorded in map book 27, page 133 in the office of the Probate Judge of Shelby County, Alabama, said point being on the Southeastern right-of-way of Shelby County Road #41 (Dunnavant Valley Road) on a curve to the right having a radius of 10549.00 feet; run Northeast along the arc of said curve a distance of 790.00 feet to the POINT OF BEGINNING; thence run S 45°15'48" E a distance of 312.33 feet to the point of curvature (PC) of a curve to the right having a radius of 500.00 feet, a chord length of 364.60 feet and a chord bearing of S 23°52'51" E; thence run 373.20 feet along the arc of said curve to the point of tangency (PT); thence run S 2°29'52" E a distance of 402.92 feet to the PC of a curve to the left having a radius of 200.00 feet, a chord length of 112.01 feet and a chord bearing of S 18°45'37" E; thence run 113.53 feet along the arc of said curve to the PT; thence run S 35°01'21" E a distance of 487.73 feet to the PC of a curve to the left having a radius of 250.00 feet, a chord length of 335.39 feet and a chord bearing of S 77°08'56" E; thence run 367.62 feet along the arc of said curve to the PT; thence run N 60°43'28" E a distance of 62.39 feet to the PC of a curve to the right having a radius of 250.00 feet, a chord length of 385.30 feet and a chord bearing of S 68°52'06" E; thence run 439.89 feet along the arc of said curve to the PT; thence run S 18°27'37" E a distance of 246.28 feet to the PC of a curve to the left having a radius of 250.00 feet, a chord length of 334.87 feet and a chord bearing of S 60°30'24" E; thence run 366.92 feet along the arc of said curve to the point of reverse curvature (PRC) of a curve to the right having a radius of 380.00 feet, a chord length of 713.28 feet and a chord bearing of S 32°44'49" E; thence run 925.93 feet along the arc of said curve to the PT; thence run S 37°03'32" W a distance of 417.80 feet to the PC of a curve to the left having a radius of 900.00 feet, a chord length of 561.00 feet and a chord bearing of S 18°53'57" W; thence run 570.51 feet along the arc of said curve to the point of compound curvature (PCC) of a curve to the left having a radius of 300.00 feet, a chord length of 424.26 feet and a chord bearing of S 44°15'39" E; thence run 471.23 feet along the arc of said curve to the PRC of a curve to the right having a radius of 200.00 feet, a chord length of 244.34 feet and a chord bearing of S 52°28'37" E; thence run 262.85 feet along the arc of said curve to the PRC of a curve to the left having a radius of 275.00 feet, a chord length of 509.57 feet and a chord bearing of S 82°43'17" E; thence run 651.74 feet along the arc of said curve to the PT; thence run N 29°23'00" E a distance of 84.00 feet to the PC of a curve to the right having a radius of 785.00 feet, a chord length of 281.32 feet and a chord bearing of N 39°42'20" E; thence run 282.84 feet along the arc of said curve to the PT; thence run N 50°01'39" E a distance of 68.81 feet to the PC of a curve to the left having a radius of 775.00 feet, a chord length of 137.23 feet and



a chord bearing of N 44°56'52" E; thence run 137.41 feet along the arc of said curve to the PT; thence run N 39°52'07" E a distance of 493.57 feet to a point; thence run N 16°35'34" E a distance of 307.48 feet to a point; thence run N 38°30'56" E a distance of 1540.44 feet to the PC of a curve to the left having a radius of 600.00 feet, a chord length of 576.63 feet and a chord bearing of N 09°47'46" E; thence run 601.50 feet along the arc of said curve to the PRC of a curve to the right having a radius of 475.00 feet, a chord length of 540.78 feet and a chord bearing of N 15°46'27" E; thence run 575.30 feet along the arc of said curve to the PT; thence run N 50°28'18" E a distance of 1322.41 feet to the PC of a curve to the right having a radius of 500.00 feet, a chord length of 988.07 feet and a chord bearing of S 48°23'16" E; thence run 1416.16 feet along the arc of said curve to the POINT OF ENDING of said centerline.

Also, a strip of land 60 feet wide, 30 feet wide on both sides of, and parallel and contiguous to the following described centerline; Commence at the Southernmost corner of Lot 2 of said Stonegate Realty Subdivision, thence run S 01°38'51" E a distance of 126.40 feet to the POINT OF BEGINNING; thence run N 31°59'16" E a distance of 303.96 feet to the PC of a curve to the right having a radius of 500.00 feet, a chord length of 175.41 feet and a chord bearing of N 42°05'24" E; thence run 176.32 feet along the arc of said curve to the PT; thence run N 52°11'33" E a distance of 553.62 feet to the PC of a curve to the right having a radius of 500.00 feet, a chord length of 175.65 feet and a chord bearing of N 62°18'31" E; thence run 176.56 feet along the arc of said curve to the POINT OF ENDING of said centerline, said point being on the Northeast boundary line of Lot 1 of said Stonegate Realty Subdivision.

## **EXHIBIT B**

### **Legal Description of Adjacent Property**



**LEGAL DESCRIPTION OF ADJACENT PROPERTY**

Any portion of the following described real property lying at an elevation below 1,000 feet (mean sea level):

**Parcel 1:**

All that part of Section 19, Township 18 South, Range 1 East, bounded on the southeast by the crest of Double Oak Mountain; on the northeast by the northwest southeast diagonal line traversing the northeast quarter of said Section 19; on the northwest by the small branch traversing diagonally the center of the northeast quarter of the northwest quarter of said section; and on the southwest by the northwest southeast diagonal line traversing the center of said Section 19.

Also a small portion of the southeast quarter of the southwest quarter of Section 18, Township 18 South, Range 1 East, lying south of "duck swamp."

**Parcel 2:**

All that part of Southwest quarter of Southeast quarter of Section 18, Township 18 South, Range 1 East lying north, east and south of "duck swamp". Also, all that part of the northeast diagonal one-half of the northeast quarter of Section 19, Township 18 South, Range 1 East, lying northwest of the crest of Double Oak Mountain.

## **EXHIBIT C**

### **Legal Description of Hollybrook Lot**



## Hollybrook Lake Lot No. 1

A 23.94 acre tract of land including Hollybrook Lake & Hollybrook Lake Lot No. 1, located in all that part of Sections 23 & 24, Township 18 South, Range 1 West, Shelby County, Alabama, and being more particularly described as Commencing at a point purported to be the Northwest corner of the Southwest quarter of said Section 24; Thence South 02 degrees 03 minutes 30 seconds West 138.65 feet, North 45 degrees 47 minutes 07 seconds East 30.00 feet, South 44 degrees 12 minutes 53 seconds East 30.00 feet, around a curve to the left having a radius 10549.00 feet and a central angle of 03 degrees 15 minutes 18 seconds an arc length of 599.29 feet, and around a curve to the left having a radius 10549.00 feet and a central angle of 03 degrees 15 minutes 05 seconds an arc length of 599.65 feet to the **Point of True Beginning**. Said point is further described as being on the southeastern right of way of Dunnivant Valley Road (County Highway 41). Thence leaving said right of as follows: South 38 degrees 51 minutes 56 seconds East 192.53 feet, South 51 degrees 11 minutes 49 seconds East 43.32 feet, South 78 degrees 38 minutes 26 seconds East 174.39 feet, South 80 degrees 29 minutes 17 seconds East 72.04 feet, North 86 degrees 08 minutes 18 seconds East 36.00 feet, North 68 degrees 14 minutes 37 seconds East 44.98 feet, North 55 degrees 44 minutes 23 seconds East 23.80 feet, North 46 degrees 05 minutes 41 seconds East 68.81 feet, North 54 degrees 45 minutes 18 seconds East 76.35 feet, North 66 degrees 13 minutes 40 seconds East 65.74 feet, South 79 degrees 05 minutes 01 seconds East 64.14 feet, South 70 degrees 19 minutes 48 seconds East 93.87 feet, South 07 degrees 09 minutes 27 seconds West 98.67 feet, South 11 degrees 05 minutes 19 seconds West 172.34 feet, South 07 degrees 07 minutes 42 seconds West 45.00 feet, South 07 degrees 37 minutes 39 seconds East 57.85 feet, South 13 degrees 02 minutes 40 seconds East 80.18 feet, South 24 degrees 25 minutes 38 seconds East 206.59 feet, South 07 degrees 47 minutes 45 seconds East 83.22 feet, South 23 degrees 44 minutes 33 seconds East 76.79 feet, South 55 degrees 36 minutes 04 seconds East 373.64 feet, North 85 degrees 57 minutes 07 seconds East 43.65 feet, North 58 degrees 58 minutes 13 seconds East 170.11 feet, North 67 degrees 39 minutes 36 seconds East 35.22 feet, North 89 degrees 47 minutes 24 seconds East 81.19 feet, South 73 degrees 48 minutes 55 seconds East 68.43 feet, and, North 87 degrees 32 minutes 00 seconds East 90.61 feet to a point. Thence as follows: South 23 degrees 48 minutes 56 seconds East 137.13 feet, South 04 degrees 00 minutes 03 seconds East 715.58 feet, South 46 degrees 26 minutes 10 seconds East 174.16 feet, South 32 degrees 00 minutes 50 seconds East 244.77 feet, South 22 degrees 01 minutes 02 seconds East 306.23 feet, South 46 degrees 22 minutes 09 seconds East 171.05 feet, South 53 degrees 34 minutes 42 seconds East 207.70 feet, South 32 degrees 46 minutes 48 seconds East 239.82 feet, South 47 degrees 06 minutes 50 seconds East 319.95 feet, North 54 degrees 48 minutes 01 seconds East 328.68 feet, and, North 59 degrees 58 minutes 41 seconds East 498.87 feet to a point. Thence South 83 degrees 57 minutes 15 seconds East 54.30 feet, South 71 degrees 53 minutes 24 seconds East 70.68 feet, South 49 degrees 05 minutes 14 seconds East 69.89 feet, North 66 degrees 35 minutes 56 seconds East 50.12 feet, North 04 degrees 21 minutes 20 seconds East 24.85 feet, North 27 degrees 02 minutes 17 seconds West 93.12 feet, North 31 degrees 00 minutes 58 seconds West 106.92 feet, North 20 degrees 33 minutes 20 seconds East 64.50 feet, North 39 degrees 13 minutes 25 seconds East 45.25 feet, North 52 degrees 43 minutes 18 seconds East 112.24 feet, North 52 degrees 25 minutes 23 seconds East 15.47 feet, North 84 degrees 17 minutes 55 seconds East 24.41 feet, North 74 degrees 58 minutes 25 seconds East 73.31 feet, North 26 degrees 47 minutes 56 seconds East 39.78 feet, North 08 degrees 06 minutes 53 seconds East 51.08 feet, North 26 degrees 26 minutes 32 seconds East 53.88 feet, North 51 degrees 01 minutes 17 seconds East 29.23 feet, North 60 degrees 09 minutes 35 seconds East 154.04 feet, North 45 degrees 47 minutes 02 seconds East 39.57 feet, North 40 degrees 11 minutes 36 seconds East 83.71 feet, North 29 degrees 41 minutes 13 seconds East 36.81 feet, North 07 degrees 52 minutes 47 seconds East 42.50 feet, North 08 degrees 06 minutes 17 seconds West 55.68 feet, North 02 degrees 58 minutes 25 seconds West 54.31 feet, North 31 degrees 10 minutes 44 seconds East 24.62 feet, North 54 degrees 05 minutes 42 seconds East 183.15 feet, North 54 degrees 30 minutes 07 seconds East 83.51 feet, North 59 degrees 42 minutes 45 seconds East 54.67 feet, North 59 degrees 52 minutes 45 seconds East 88.47 feet, North 09 degrees 36 minutes 23 seconds East 124.56 feet, North 69 degrees 17 minutes 19 seconds West 150.00 feet, South 82 degrees 42 minutes 41 seconds West 408.95 feet, North 60 degrees 42 minutes 01 seconds West 17.58 feet, North 03 degrees 59 minutes 00 seconds West 40.96 feet, North 17 degrees 46 minutes 44 seconds West 23.11 feet, North 59 degrees 04 minutes 23 seconds West 19.21 feet, North 72 degrees 22 minutes 17 seconds West 51.58 feet, North 48 degrees 10 minutes 11 seconds West 45.04 feet, North 29 degrees 02 minutes 39 seconds West 91.65 feet, North 10 degrees 45 minutes 28 seconds East 70.13 feet, North 29 degrees 38 minutes 10 seconds East 402.33 feet, and, North 76 degrees 21 minutes 29 seconds West 316.97 feet to a point. Thence running along the following chord bearing and distances: North 19 degrees 20 minutes 18 seconds East 110.55 feet, North 53 degrees 54 minutes 38 seconds East 141.87

feet, North 70 degrees 42 minutes 34 seconds East 110.40 feet, North 70 degrees 54 minutes 07 seconds East 60.75 feet, North 71 degrees 30 minutes 57 seconds East 76.24 feet, North 69 degrees 32 minutes 07 seconds East 79.79 feet, North 71 degrees 01 minutes 45 seconds East 161.22 feet, North 71 degrees 34 minutes 22 seconds East 129.84 feet, North 61 degrees 59 minutes 50 seconds East 122.11 feet, North 54 degrees 09 minutes 52 seconds East 58.24 feet, North 51 degrees 28 minutes 35 seconds East 159.40 feet, North 41 degrees 01 minutes 08 seconds East 40.38 feet, North 35 degrees 50 minutes 35 seconds East 177.28 feet, North 38 degrees 43 minutes 53 seconds East 188.52 feet, and, , North 36 degrees 19 minutes 39 seconds East 63.33 feet to the Southeast corner of the **Hollybrook Lake Lot No. 1** herein described and the **Point of True Beginning**. Thence as follows: around a curve to the left having a radius of 156.83 feet and a central angle of 40 degrees 03 minutes 55 seconds a chord bearing and distance of North 04 degrees 38 minutes 46 seconds East 107.45 feet, around a curve to the right having a radius of 125.94 feet and a central angle of 21 degrees 56 minutes 18 seconds a chord bearing and distance of North 04 degrees 25 minutes 03 seconds West 47.93 feet, North 06 degrees 33 minutes 06 seconds East 287.09 feet, around a curve to the left having a radius of 230.00 feet and a central angle of 48 degrees 03 minutes 59 seconds a chord bearing and distance of North 17 degrees 28 minutes 23 seconds West 187.28 feet, North 71 degrees 24 minutes 56 seconds East 66.61 feet, North 58 degrees 05 minutes 57 seconds East 81.95 feet, North 57 degrees 43 minutes 06 seconds East 91.35 feet, North 35 degrees 31 minutes 34 seconds East 52.03 feet, North 24 degrees 13 minutes 07 seconds East 102.80 feet, North 39 degrees 25 minutes 21 seconds East 159.63 feet, North 19 degrees 30 minutes 46 seconds East 54.77 feet, North 32 degrees 40 minutes 19 seconds East 70.33 feet, North 39 degrees 03 minutes 55 seconds East 98.24 feet, North 41 degrees 11 minutes 45 seconds West 13.87 feet, North 54 degrees 34 minutes 24 seconds East 123.46 feet, North 19 degrees 03 minutes 52 seconds West 34.27 feet, North 76 degrees 33 minutes 45 seconds West 85.00 feet, North 49 degrees 36 minutes 19 seconds West 42.78 feet, North 11 degrees 58 minutes 25 seconds East 7.00 feet, North 83 degrees 48 minutes 26 seconds West 329.72 feet, North 86 degrees 52 minutes 38 seconds East 447.03 feet, South 16 degrees 39 minutes 47 seconds West 1094.69 feet, South 64 degrees 27 minutes 59 seconds West 857.24 feet, and, North 68 degrees 54 minutes 38 seconds West 166.03 feet to the **Point of True Beginning**.

According to the survey of Goodwyn, Mills & Cawood, Inc. dated June 22, 2000, last revised December 14, 2000.



## **EXHIBIT D**

### **Legal Description of Hollybrook Lot Driveway**

## **Hollybrook Driveway Easement**

A parcel of land situated in the SE ¼ of Section 24, Township 18 South, Range 1 West, and the Southwest ¼ of Section 19 Township 18 South, Range 1 East, Shelby County, Alabama, and being more particularly described as follows:

Commence at the Northernmost corner of Lot 1 of the Stonegate Realty Subdivision, as recorded in map book 27, page 133 in the office of the Probate Judge of Shelby County, Alabama, said point located in the Northwest ¼ of Section 19 Township 18 South, Range 1 East; thence run S 15°44'23" W along the boundary of said Lot 1 a distance of 862.14 feet to a point; thence run S 63°27'59" W a distance of 87.48 feet to the POINT OF BEGINNING; thence continue along the last described course a distance of 51.31 feet to a point; thence run S 39°31'42" E a distance of 88.79 feet to a point on the Northwest boundary of a proposed 60 foot wide access road easement; thence run N 50°28'17" E a distance of 50.00 feet along the boundary of a proposed 60 foot wide access road easement to a point; thence run N 39°31'42" W a distance of 77.25 feet to the POINT OF BEGINNING.

## **EXHIBIT E**

### **Legal Description of Property**



## **LEGAL DESCRIPTION OF PROPERTY**

Lots 1 and 2 according to the Survey of the Stonegate Realty Subdivision recorded in Map Book 27, Page 133 in the Office of the Judge of Probate of Shelby County, Alabama.

## **EXHIBIT F**

### **Legal Description of Retained Property Driveway Easement**

### **Retained Property Driveway Easement**

Also, a strip of land 60 feet wide, 30 feet wide on both sides of, and parallel and contiguous to the following described centerline; Commence at the NW corner of the SW  $\frac{1}{4}$ , Section 24, Township 18 South, Range 1 West, Shelby County, Alabama thence run in an Easterly direction along the North line of said  $\frac{1}{4}$  section a distance of 2028.89 feet to a point, thence turn  $90^{\circ}00'$  to the right in a Southerly direction a distance of 887.51 feet to the corner of Lot 1 of said Stonegate Realty Subdivision, thence run  $S 42^{\circ}42'37'' W$  a distance of 557.70 feet along the boundary line of said Lot 1 to a point, thence run  $S 47^{\circ}17'23'' E$  a distance of 30.00 feet to the POINT OF BEGINNING; thence run  $S 42^{\circ}42'37'' W$  a distance of 836.27 feet, along a line parallel to, and 30.00 feet Southeast of said boundary line of said Lot 1, to a point; thence run  $S 41^{\circ}44'25'' W$  a distance of 273.22 feet to the POINT OF ENDING of said centerline.



## **EXHIBIT G**

### **Legal Description of Smyer Lake Lot 1**

### **Smyer Lake Lot No. 1**

A 12.00 Acre tract located in all that part Sections 23 & 24, Township 18 South, Range 1 West, Shelby County, Alabama, and being more particularly described as follows: Commencing at a point purported to be the Northwest corner of the Southwest quarter of said Section 24; Thence South 02 degrees 03 minutes 30 seconds West 138.65 feet, North 45 degrees 47 minutes 07 seconds East 30.00 feet, South 44 degrees 12 minutes 53 seconds East 30.00 feet to a point that is further described as being on the southeastern right of way of Dunnavant Valley Road (County Highway 41), and the **Point of True Beginning**. Thence along said right of way and around a curve to the left having a radius of 10549.00 feet a chord bearing and distance of South 47 degrees 30 minutes 13 seconds West 599.20 feet. Thence leaving said right of way as follows: South 47 degrees 25 minutes 47 seconds East 995.39 feet, North 37 degrees 02 minutes 44 seconds East 172.29 feet, North 26 degrees 30 minutes 40 seconds East 138.00 feet, North 40 degrees 06 minutes 37 seconds East 114.18 feet, North 09 degrees 52 minutes 43 seconds East 63.77 feet, North 06 degrees 01 minutes 54 seconds West 132.08 feet, North 32 degrees 08 minutes 13 seconds West 107.98 feet, North 58 degrees 23 minutes 59 seconds West 66.08 feet, North 61 degrees 29 minutes 56 seconds West 58.27 feet, North 52 degrees 25 minutes 43 seconds West 90.73 feet, North 40 degrees 23 minutes 46 seconds West 75.30 feet, North 63 degrees 05 minutes 09 seconds West 67.59 feet, North 73 degrees 51 minutes 54 seconds West 33.60 feet, North 19 degrees 32 minutes 18 seconds West 129.78 feet, and, North 44 degrees 40 minutes 27 seconds West 150.29 feet to the **Point of True Beginning** and containing 12.00 acres, more or less.

According to the survey of Goodwyn, Mills & Cawood, Inc. dated June 22, 2000, last revised December 14, 2000.

## **EXHIBIT H**

### **Legal Description of Smyer Lake Lot 2**



## Smyer Lake Lot No. 2

A 17.88 Acre tract located in the Southwest Quarter of Section 24, Township 18 South, Range West, Shelby County, Alabama and being more particularly described as follows: Commencing at a point purported to be the Northwest corner of the Southwest quarter of Section 24; Thence South 01 degrees 03 minutes 30 seconds West 138.65 feet, North 44 degrees 47 minutes 07 seconds East 30.00 feet, South 45 degrees 12 minutes 53 seconds East 30.00 feet to a point that is further described as being on the southeastern right of way of Dunnivant Valley Road ( County Highway 41), Thence along said right of way and around a curve to the left having a radius of 10,549.00 feet, a chord bearing and distance of South 46 degrees 30 minutes 13 seconds West 599.20 feet. Thence leaving said right of way as follows: South 48 degrees 25 minutes 47 seconds East 995.39 feet, South 36 degrees 02 minutes 45 seconds West 52.34 feet, South 07 degrees 36 minutes 02 seconds East 75.16 feet, and South 66 degrees 26 minutes 01 seconds East 59.01 feet to the POINT OF TRUE BEGINNING, Thence as follows: North 81 degrees 37 minutes 25 seconds East 44.63 feet, North 41 degrees 19 minutes 41 seconds East 507.83 feet, North 59 degrees 40 minutes 21 seconds East 91.96 feet, North 72 degrees 46 minutes 57 seconds East 74.99 feet, South 89 degrees 18 minutes 37 East 78.74 feet, South 82 degrees 27 minutes 35 seconds East 78.40 feet, North 59 degrees 23 minutes 45 seconds East 54.67 feet; South 52 degrees 17 minutes 40 seconds East 665.49 feet, South 42 degrees 42 minutes 37 seconds West 673.10 feet, South 44 degrees 42 minutes 04 seconds West 152.08 feet, South 37 degrees 27 minutes 42 seconds West 75.34 feet, South 42 degrees 58 minutes 09 seconds West 56.99 feet, South 58 degrees 37 minutes 03 seconds West 39.64 feet, South 77 degrees 28 minutes 13 seconds West 46.43 feet; North 38 degrees 33 minutes 37 seconds West 855.35 feet to the POINT OF TRUE BEGINNING and containing 17.88 acres, more or less.

## **EXHIBIT I**

### **Legal Description of Smyer Lake Lot 3**

Smyer Lake Lot No. 3

A 10.98 Acre tract located in the Southwest Quarter of Section 24, Township 18 South, Range West, Shelby County, Alabama and being more particularly described as follows: Commencing at a point purported to be the Northwest corner of the Southwest quarter of Section 24; Thence South 02 degrees 03 minutes 30 seconds West 138.65 feet, North 44 degrees 47 minutes 07 seconds East 30.00 feet, South 45 degrees 12 minutes 53 seconds East 30.00 feet to a point that is further described as being on the southeastern right of way of Dunnivant Valley Road ( County Highway 41), Thence along said right of way and around a curve to the left having a radius of 10549.00 feet, a chord bearing and distance of South 46 degrees 30 minutes 13 seconds West 599.20 feet. Thence leaving said right of way as follows: South 48 degrees 25 minutes 47 seconds East 995.39 feet, South 36 degrees 02 minutes 44 seconds West 52.34 feet, South 07 degrees 36 minutes 02 seconds East 75.16 feet, South 66 degrees 26 minutes 00 seconds East 59.01 feet, North 81 degrees 37 minutes 25 seconds East 44.63 feet, North 41 degrees 19 minutes 41 seconds East 507.83 feet, North 59 degrees 40 minutes 21 seconds East 91.96 feet, North 72 degrees 46 minutes 57 seconds East 74.99 feet, South 89 degrees 18 minutes 37 East 78.74 feet, South 82 degrees 27 minutes 35 seconds East 78.40 feet, North 59 degrees 23 minutes 45 seconds East 54.67 feet to the POINT OF TRUE BEGINNING, Thence as follows: North 59 degrees 23 minutes 45 seconds East 27.53 feet, North 45 degrees 03 minutes 30 seconds East 75.30 feet, North 36 degrees 35 minutes 39 seconds East 73.33 feet, North 28 degrees 46 minutes 18 seconds East 83.85 feet, North 22 degrees 21 minutes 24 East 48.05 feet, North 23 degrees 38 minutes 21 seconds East 106.92 feet, North 31 degrees 34 minutes 13 seconds East 75.93 feet, North 51 degrees 31 minutes 44 seconds East 58.41 feet, North 69 degrees 38 minutes 15 seconds East 84.19 feet, North 82 degrees 25 minutes 35 seconds East 65.80 feet, South 79 degrees 27 minutes 41 seconds East 26.79 feet, South 84 degrees 38 minutes 23 seconds East 49.67 feet, South 79 degrees 58 minutes 24 East 69.12 feet, South 86 degrees 23 minutes 17 seconds East 38.23 feet, South 83 degrees 24 minutes 26 seconds East 56.25 feet, South 86 degrees 47 minutes 51 seconds East 72.19 feet, South 14 degrees 47 minutes 01 seconds West 11.37 feet, South 14 degrees 47 minutes 01 seconds West 124.80 feet, South 34 degrees 44 minutes 56 seconds East 350.61 feet, South 42 degrees 42 minutes 37 seconds West 590.33 feet, North 50 degrees 17 minutes 40 seconds West 665.49 feet to the POINT OF TRUE BEGINNING and containing 10.98 acres, more or less.



## **EXHIBIT J**

### **Access Road Design Requirements**

See Attached.

Alabama Engineering Company, Inc.

1375 Dunnavant Valley Road  
Birmingham, Alabama 35242

PHONE (205) 408-8095

FAX (205) 408-8170

December 11, 2000

Stonegate Realty  
1950 Stonegate Drive, Suite 300  
Birmingham, Alabama 35242

Attention: Mr. Peter Wolnski

Reference: Stonegate Farms Development

Inst # 2001-02969

01/29/2001-02969  
08:19 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
038 MMB 125.00

Dear Peter:

The road that is planned for the Stonegate Farms development, located in Sections 23 and 24, Township 18 S, Range 1 West, will be constructed generally in accordance with the Subdivision Regulations of the Shelby County, Alabama. These specifications allow for a six inch thick layer of crushed stone base, with a 140 pounds per square yard layer of plant mixed bituminous concrete binder layer and a 80 pounds per square yard layer of plant mixed bituminous concrete wearing layer.

Shelby County specifications allow for a 20 foot wide road without curbs or gutters in large lot (i.e. three acres or larger) subdivisions. It is our intention to request a variance from this regulation to allow for an 18 foot wide road. The Shelby County Planning Commission will decide whether to grant this variance.

The horizontal and vertical roadway alignments are planned to be based on a 20 mile per hour design speed. The selection of this design speed is subject to the approval of the Shelby County Engineer.

Please call me if you have any questions, or if I can be of any further assistance.

Yours very truly,

Alabama Engineering Company, Inc.



Robert W. Easley, IV, PE