



STATE OF ALABAMA )  
COUNTY OF SHELBY )

Final

DECLARATION OF RESTRICTIVE COVENANTS

KNOW ALL MEN BY THESE PRESENTS: That:

**WHEREAS**, Claude A. Smeraglia, a married man, (herein, "the Developer") has heretofore acquired fee simple title to certain real property situated in Shelby County, Alabama as more particularly described as; All that part of the NW1/4 of the SE1/4 and the S1/2 of the SE1/4 of Section 17, Township 21 South, Range 4 West, lying north of the Cahaba River in Shelby County, Alabama (the Property). The Property is not the homestead of the Developer or his spouse.

**WHEREAS**, the Developer desires to develop the Property as a residential subdivision and in doing so to subject the Property to the restrictions and covenants set forth in this Declaration of Restrictive Covenants (herein "the Declaration").

**NOW THEREFORE**, the Developer does, upon recording hereof, declare and make the Property and each portion of the Property now or hereafter included in the Property subject to the covenants, conditions, restrictions, uses, easements, limitations and affirmative obligations set forth in this Declaration, all of which are declared to be in furtherance of a plan for the improvement of the Property in a desirable and uniform manner, and all of which shall run with the land and shall be binding on all persons, firms or corporations (the Owners) having or acquiring any right, title or interest in the Property or any part(s) thereof, and shall be for the benefit of each such Owner(s) of the Property or interest therein, and shall inure to the benefit of and be binding of an be binding upon each successor in interest to the Owners thereof.

## **ARTICLE I**

### **DEFINITIONS**

For the purposes of this instrument, the following capitalized terms shall have the following meanings:

- (a) Tract, means any portion of the Property.
- (b) Primary Dwelling, means a single family residential dwelling.
- (c) Outbuilding, means a barn, stable, workshop, storage building, gazebos or other structure which is not intended for permanent occupancy by human beings.
- (d) Structure, means a Primary Dwelling or Outbuilding.
- (e) Service Providers, means all providers of services for the maintenance, protection and benefit of the Property and the Development Property (as herein defined) including, but not limited to, fire departments, law enforcement agencies, utility providers, postal service, garbage collectors and any other provider of service which would benefit the Property and the Development Property.
- (f) Utility Companies, means all entities providing utility services to the Property including, but not limited to power, water, gas, telephone and cable television.
- (g) Development Property, means that certain real property described as the South 1/2 of the Northeast 1/4 and the North 1/2 of the Southeast 1/4 of Section 8, Township 21S, Range 4 West, Shelby County, Alabama.
- (h) The CRG, has the same meaning as the words "Subdivision" and "Property" as defined in Article I paragraph (a) of the Declaration of Restrictive Covenants For Cahaba River Getaways as recorded in Inst. # 2002-11279, Probate Office of Shelby County, Alabama.
- (i) Tract Owner, means the Owner of any Tract within the Property.

## **ARTICLE II**

### **Land Use**

The Property will be used for residential or agricultural purposes only and not for any business or trade. Home offices are allowed,

however, such allowance is intended only to allow individual work at a Structure located on a Tract, but not the conduct of business with the presence of the general public at the Property.

### **ARTICLE III**

#### **Building Requirements**

- (a) **MINIMUM STRUCTURE SIZE OF PRIMARY DWELLING.** No Tract shall contain more than one Primary Dwelling and no Primary Dwelling shall be erected on the Property if such dwelling contains less than 800 square feet of living space. Living Space is defined as heated and finished areas and does not include porches, garages, basements, carports or attics.
- (b) **EXTERIOR MATERIAL.** No Primary Dwelling or Outbuilding shall use the following materials which shall be visible on the exterior of any such building: (a) concrete block; or (b) stucco over concrete block.
- (c) **DRIVEWAYS.** All driveways shall be gravel or asphalt.
- (d) **BUILDING LOCATION.** No Structures, other than fences, shall be located any closer than 100 feet from the Road nor shall any Structure other than fences be located any closer than 50 feet from any non-Road exterior line of the Property.
- (e). **SEPTIC TANKS.** All septic tanks must be of an improved type, such tanks together with adequate field lines must be approved and completely acceptable to the Shelby County Health Department. No septic tank or field line shall be constructed within 20 feet of an exterior line of a Tract. No sewer or drainage lines shall be constructed or laid which shall empty on or become a nuisance to an adjoining Parcel, property line or the Road.
- (f) **THE ROOF.** Pitch on any Structure shall not be less than 6 and 12 unless first approved in writing by the Architectural Review Committee.
- (g) **ALL** Primary Dwellings will have brick, stone or dryvit type product on all four sides of the foundation, no exposed block. All Structures are to be of traditional styling and approved in writing by the Architectural Review Committee.

### **ARTICLE IV**

#### **ARCHITECTURAL REVIEW COMMITTEE**

(a) **APPROVAL OF ARCHITECTURAL REVIEW COMMITTEE.** No Structure, building, or fence shall be commenced, erected, placed, moved onto or permitted to remain on a Tract, nor shall any existing Structure within the Property be altered in any way which materially changes the exterior appearance thereof until same is submitted to and approved by the Architectural Review Committee (herein "the Architectural Review Committee", "the ARC" or the Committee"). The ARC will be provided with such plans and specifications which will be in a form and shall contain such information, as may be reasonably required by the Architectural Review Committee and shall include but no necessarily be limited to:

1. a site plan of the Tract showing the location, height, and exterior design (including a summary of all proposed materials together with samples of exterior materials and paint colors) of all Structures and improvements proposed to be constructed on the Property; paint colors preferably should be earth tone. Bright colors are discouraged and will be denied;

(b) **COMPOSITION OF THE COMMITTEE.** The Architectural Review Committee (the "Committee") shall be composed of Connor Farmer until such time as the Developer has no ownership interest in the Property. The Developer may elect to substitute Connor Farmer with one or more Owners within the Property prior to selling all the Property. At such time as the Developer has sold all of the Property, the Committee shall be comprised of at least one (1) individual who is an Owner of a Tract within the Property and who is elected by a majority of the fee simple Owners of the Tracts within the Property at such time. In the event there are only two Owners within the Property and in the event there is a conflict between such Owners as to the Owner who is to be the Committee, the Owners shall place their names in a hat and an independent person shall draw one name, which Owner so drawn shall be the Committee.

(c) **BASIS FOR DISAPPROVAL OF PLANS:**

1. The scope of review by the Committee shall be limited to appearance, improvement location and square footage size. The purpose of the Committee is to promote quality development on the Parcels and not necessarily to impose requirements concerning the type of Structure or

the design of such Structures on the Parcels. **THE ARC DOES NOT ASSUME OR ACCEPT BY THE FILING HEREOF ANY RESPONSIBILITY OR AUTHORITY TO REVIEW FOR STRUCTURAL SOUNDNESS, COMPLIANCE WITH BUILDING OR ZONING CODES OR STANDARDS, OR ANY OTHER FACTORS.**

**ARTICLE V  
ROADS AND EASEMENTS**

(a) There exists a road (the Road) entering the Development Property from the north line of the Development Property from Southern Lane and continuing in a southerly and southeasterly direction to the southeast corner of the Development Property and on in a southerly direction south of the Development Property to a point where the Road splits into two segments, both of which enter the CRG at the north line of the CRG. As the Road crosses the north line of the CRG at the westerly most intersection, the Road continues in a southwesterly direction to the Property. As the Road crosses the north line of the CRG at the easterly most intersection, the Road continues in a southeasterly direction to the Common Area (as hereinafter defined). The Road is depicted on Exhibit A, attached hereto and incorporated by reference herein. To the best knowledge and belief of the Developer, the Road is a prescriptive public road.

**1. The Road.**

**A. GRANTS, RESERVATIONS AND CONDITIONS RELATIVE TO THE ROAD.**

Grantor hereby establishes, reserves and remises, releases, quitclaims, grants, sells and conveys;

(i) A non exclusive, perpetual easement, sixty (60) feet in width, running with the land for vehicular, pedestrian and horse ingress and egress and for utilities and drainage over, across, above and under the Road to the Owners, their heirs, successors and assigns; and,

(ii) To the Service Providers and the Utility Companies, a non exclusive easement for ingress and egress along the Road for the purpose of providing services and

utilities to the Property.

TO HAVE AND TO HOLD TO THE OWNERS, THE UTILITY COMPANIES AND THE SERVICE PROVIDERS, THEIR HEIRS, SUCCESSORS AND ASSIGNS FOREVER.

B. **MAINTENANCE.** The Road and the gate thereon located at the intersection of the north line of the Development Property and Southern Lane (the Gate) shall be maintained for normal maintenance in equal shares by the owners of all parcels of land within the Property, the Development Property and the CRG.

(b) **INDIVIDUAL REPAIR.** If any Owner (their guests, contractors, agents or invitees) cause extraordinary damage to the Road, such Owner shall be responsible to immediately repair such damage. The Road is designed for light residential traffic and care must be taken during construction on the Property not to damage the Road.

## ARTICLE VI

### THE COMMON AREA

(a) **CREATION AND RESERVATION:** As shown on the Record Map of Cahaba River Getaways as set out in Map Book 29, Page 94, Probate Office of Shelby County, Alabama, there exists a common area (the Common Area) located on Lot 1 of Cahaba River Getaways. The Common Area is intended for the use by the Owners of any Tract, the Owner(s) of the Development Property and the Owner's of the CRG as a recreational area and an access to the Cahaba River. Accordingly, the Developer does hereby reserve, remise, release, quitclaim, grant, sell and convey to the Owners of any Tract a non-exclusive, perpetual easement on the Common Area for the purpose of recreation and access to the Cahaba River. TO HAVE AND TO HOLD unto the Owners of any Tract, their heirs, successors and assigns forever.

(b). **USE AND INDEMNITY:** The Common Area may be used by the Owners of any Tract, the Owner(s) of the Development Property and the Owner's of the CRG and their guests, however guests shall not be entitled to the

use of the Common Area without the presence of one of the foregoing Owners or their immediate family. No such Owner shall be responsible for any damage to person or property caused by the use of the Common Area by such Owners or their families or guests except for negligence.

## ARTICLE VII

### Miscellaneous

(a) **ANIMALS.** No dog kennels for commercial purposes will be allowed. No cows, swine or chickens will be allowed, and no commercial breeding of any animal will be allowed. Horses are allowed, however, there shall be no more than one (1) horse per 2.8 pastured and fenced acres located within the Property.

(b) **No** obnoxious or offensive activity shall be carried on upon the Property, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the Property, the Common Area or the Road. Without limiting the generality of the foregoing, it is the intent of the Developers and this Declaration to restrict the use of the Property from any activity which will detract from a high quality residential estate subdivision. Accordingly, no commercial vehicle or any inoperable motor vehicle shall be allowed on the Property. Nor shall the Property be used as a dumping ground for rubbish, trash, garbage or other waste and such shall not be kept except in sanitary containers. The Property shall be maintained in a neat and orderly fashion at least to the extent of visibility from the Road or any other Tract.

*CAS* (c) The Property may only be divided into resulting Tracts which contain not less than <sup>20</sup> acres per resulting Tract. Any Owner desiring to divide any portion of the Property shall comply, at such Owners expense, with all applicable governmental laws or regulations having to do with the division of real property at the time of any such division.

(d) **GRANTEE'S ACCEPTANCE.** The grantee of any Tract subject to the coverage of this Declaration, by acceptance of the deed or other instrument conveying an interest in or title to, or the execution of a contract for the purpose thereof, whether from Owner or a subsequent Owner of such Tract, shall accept such deed or other contract upon and subject to each and all of these restrictions herein contained and other easements, restrictions and reservations of record.

(e) **DURATION AND AMENDMENT.** The restrictions contained in this Declaration shall run with and bind the Property and, shall inure to the benefit of and shall be enforceable by the ARC and the Owner of any real property included in the Property, their respective legal representatives, heirs, successors and assigns until the 31<sup>st</sup> day of December, 2015, after which time said restrictions shall be automatically extended for successive periods for ten (10) years. This Declaration may not be amended in any respect except by the execution of an instrument which shall be signed by 2/3 of the Owners of the Property which instrument shall be filed for recording among the Land Records of Shelby County, Alabama, or in such other place of recording as may be appropriated at the time of the execution of such instrument. No amendment, expiration or termination of this Declaration shall void any of the easements granted or reserved herein.

(f) **ENFORCEMENT.** In the event of a violation or breach of any of these restrictions or any amendments thereto by the Owner of any Tract within the Property, or employee, agent, or lessee of such Owner, the other Owner(s) of real property within the Property, the Development Property, or the CRG, their successors and assigns, or any party to whose benefit these restrictions inure shall have the right to proceed at law or in equity to compel compliance with the terms and conditions hereof, to prevent the violation or breach of said restrictions, to sue for and recover damages for any amounts required to be paid hereunder, or take all such courses of action at the same time, or such legal remedy deemed appropriate. No delay or failure on the part of an aggrieved party to initiate and available remedy set forth herein shall be held to be a waiver of that party or of any other party to assert any right available to him upon the recurrence of continuation of said violation or the occurrence of different violations. Damages shall not be deemed adequate compensation for any breach or violation of any provision hereof, but any person or entity entitled to enforce any provision hereof shall be entitled specifically to relief by way of injunction as well as any other available relief either at law or in equity. Any party to proceeding who succeeds in enforcing a restriction or enjoining the violation of a restriction against a Tract Owner shall be awarded as reasonable

attorney's fee against such Tract Owner, and shall have the right to place recorded lien on any Tract for purpose of securing the payment of any amounts owing by a Tract Owner under this Declaration and such lien may be enforced in the same manner as foreclosure of a mortgage under the law of the State of Alabama.

(g) **MODIFICATION OF THESE COVENANTS BY DEVELOPER.**

Notwithstanding anything to the contrary contained herein, the Developers reserve the right to unilaterally modify these covenants with respect to any Tract owned by Developer at any time without the necessity of obtaining approval from any Tract Owner or Tract Mortgagee. Any such modification shall only apply to Developer Owned Tract(s).

(h) **PROPERTY SOLD AS IS WHERE IS.** By accepting a Deed or Mortgage to a Tract, such Owner and/or Mortgagee acknowledges that the Developer has no further responsibility with respect to the Property, the Road or improvements located thereon, it being expressly understood that all Tracts and any improvements including the Road are sold AS IS/WHERE IS.

(i) **ARBITRATION.** Any controversy or claim between a Tract Owner and the Developer, which may properly be submitted to arbitration, shall be settled under common law arbitration by arbitration in accordance with the rules of the American Arbitration Association, and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Each party to such claim or controversy shall appoint one person as an arbitrator to hear and determine the dispute and if they shall be unable to agree, then the two arbitrator whose decision shall be final and conclusive upon the parties hereto. The expenses of such arbitration shall be borne by the losing party or is such proportion as the arbitrators shall decide. The successful party shall recover as expenses and costs all reasonable attorney's fees incurred by him in connection with the

arbitration proceeding or any appeals therefrom. In the event any such controversy or claim is not properly submissible to arbitration, the Tract Owner having such claim or controversy with the Developer, irrevocably waives all right to trial by jury in any court in any such action.

(j) **NOTICES.** Any notice to be given under these covenants shall be in writing and be sent by certified mail, return receipt requested and shall be effective if given to the Tract Owner to whom such notice is directed at either; 1. The address provided by such Tract Owner(s) to the other Tract Owner(s); or 2. At the address maintained by the Tax Collector of Shelby County, Alabama for such Tract Owner (herein the "Authorized Address"). Mailing, postage prepaid, by certified mail, to the Authorized Address shall conclusively mean receipt by the Tract Owner to whom such notice is intended. In the event such notice is for repair or maintenance on the Road, the failure of any Tract Owner to respond to any such notice within thirty (30) days of the date of such notice shall be conclusively deemed an Affirmative Vote by such non responding Tract Owner to the proposed maintenance or repairs.

(k) **Central State Bank**, by its execution of this Declaration, agrees that its interest as it appears, in the Property or any Tracts contained in the Property, is subordinate and subject to this Declaration.

(l) **GRANTEE'S ACCEPTANCE.** The grantee of any Tract subject to the coverage of this Declaration, by acceptance of the deed or other instrument conveying an interest in or title to, or the execution of a contracts for the purchase thereof, whether from Developers or a subsequent Owner of such Tracts, shall accept such deed or other contracts upon and subject to each and all of the restrictions, conditions and easements herein contained and other easements, restrictions and reservations of record.

IN WITNESS WHEREOF, the undersigned, as the Developer of the Property, has caused this Declaration to be executed as of the 9 day of MAY, 2002.

Claude A. Smeraglia  
Claude A. Smeraglia

STATE OF ALABAMA )  
Jefferson COUNTY )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Claude A. Smeraglia, 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 the foregoing instrument he executed the same voluntarily on the day the same bears date.

MAY Given under my hand and seal this 9 day of \_\_\_\_\_, 2002.

[Signature]  
Notary Public  
My Commission Expires: 3-1-06

CENTRAL STATE BANK

By: W. H. M. Edg.  
Its:

STATE OF ALABAMA )  
COUNTY OF Jefferson )

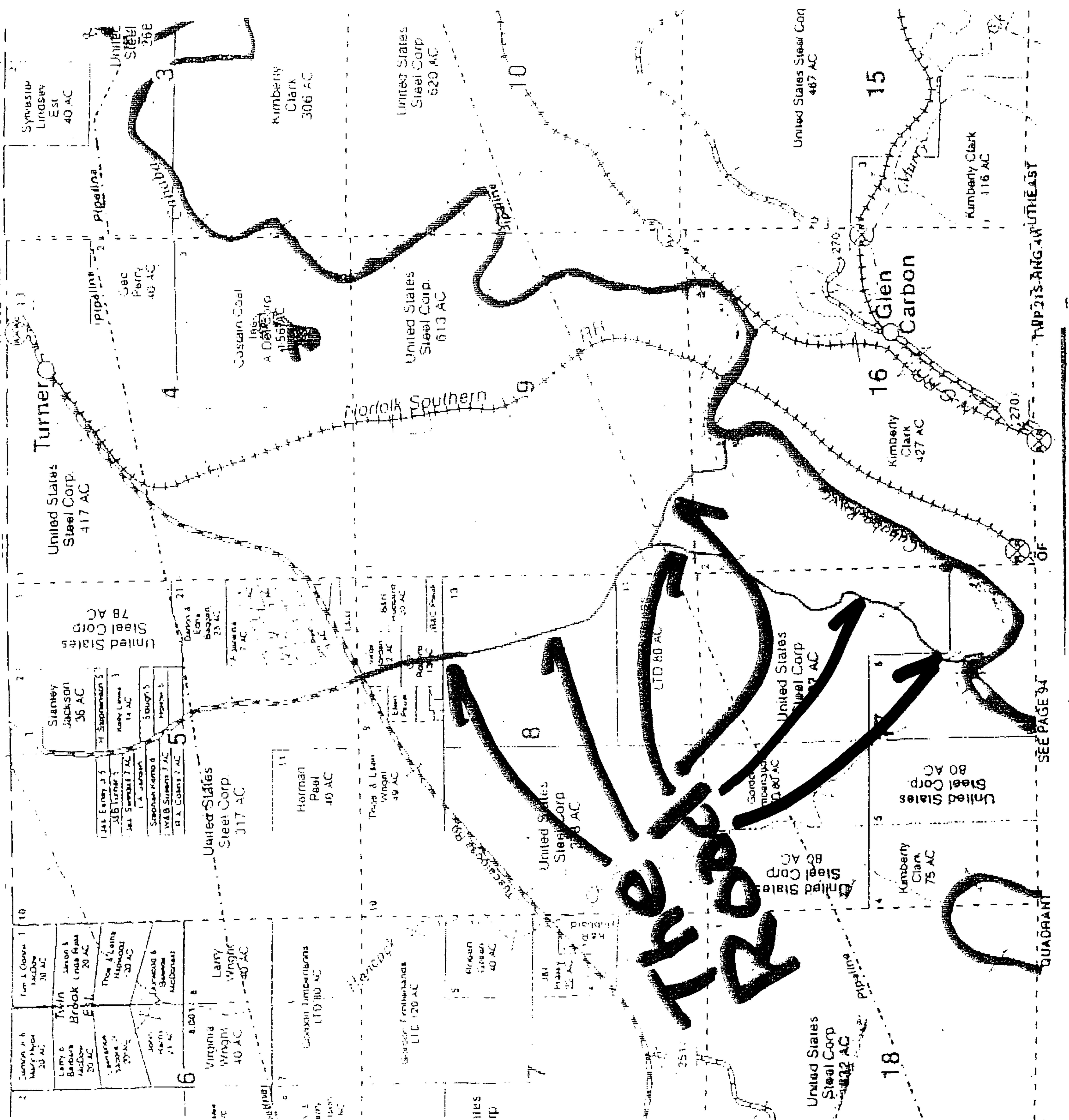
I, the undersigned, a Notary Public in and for said County in said State, hereby certify that W. H. M. Edg. whose name as Vice-President of CENTRAL STATE BANK, a corporation, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand and seal this 9 day of MAY, 2002.

W. H. M. Edg.  
Notary Public  
My Commission Expires: 3-1-06

# EXHIBIT 'A'

## DECLARATION OF RESTRICTIVE COVENANTS (SMERAGLIA)



SEE PAGE 94

QUADRANT