

7294

This Instrument Prepared by:
R. Shan Paden
Paden & Paden
Attorneys at Law
5 Riverchase Ridge, Suite 100
Birmingham, Alabama 35244

STATE OF ALABAMA)
COUNTY OF SHELBY)

AGREEMENT

This Indenture, made the 4th day of June, 2002, between James M. Schenk and wife, Susan S. Schenk, hereinafter referred to as "Schenks" and Kevin M. Sims and wife, Pamela J. Sims, hereinafter referred to as "Sims."

WITNESSETH

Whereas, the Schenks are seized of an estate in fee simple of a parcel of land situated in Shelby County, Alabama, described as follows, to-wit:

Lot 47, Greystone 8th Sector, as recorded in Map Volume 20, Page 93 A & B in the Office of the Judge of Probate of Shelby County, Alabama,

Whereas, the Sims are seized of an estate in fee simple of a parcel of land situated in Shelby County, Alabama, described as follows, to-wit:

Lot 46, Greystone 8th Sector, as recorded in Map Volume 20, Page 93 A & B in the Office of the Judge of Probate of Shelby County, Alabama,

Whereas, the retaining wall situated on the eastern boundary of the Sims' property which was constructed for the benefit of the property owned by the Sims encroaches onto the Schenks' property as shown by the attached survey,

Whereas, the Schenks have agreed, in consideration of the covenants contained herein, to grant to the Sims a limited easement over, across, through and under that portion of the Schenks' property described herein upon which the retaining wall encroaches for the purpose of maintaining and repairing said retaining wall,

Whereas, a storm water drainage catch basin was constructed on the eastern side of the Sims' property for the benefit of both the Schenk's property and the Sims property,

Whereas, the Sims have agreed to maintain and repair the storm water drainage catch basin and to keep the same clear of debris and agree to allow the Schenk's the right, but not the obligation, to ingress and egress from the Sims' property for the sole purpose of clearing debris from the storm water drainage catch basin,

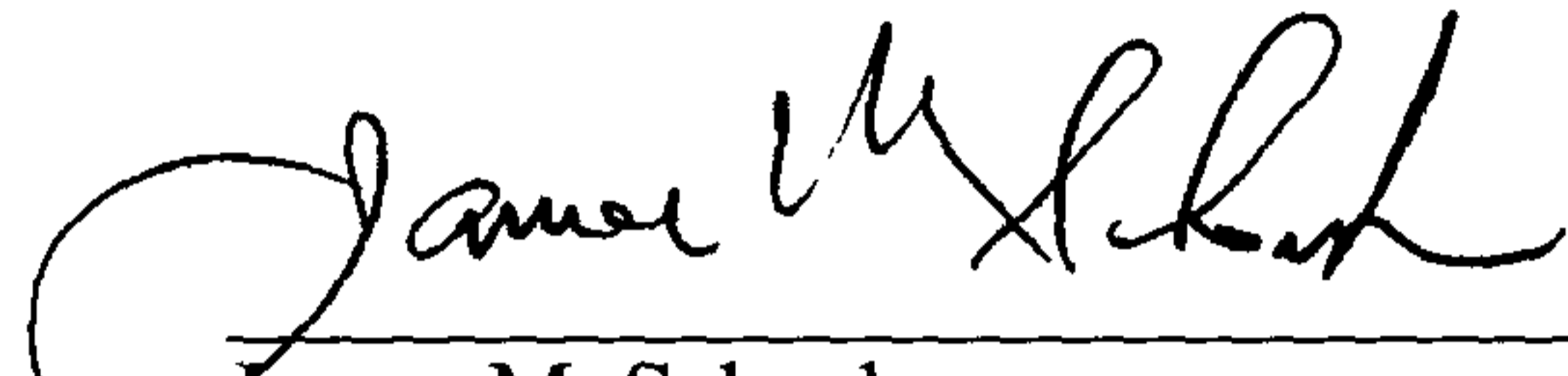
NOW, THEREFORE, in consideration of the covenants and promises contained herein, the parties do hereby covenant and agree as follows, to-wit:


1. The Schenks grant the Sims the right to use that portion of the Schenks' property upon which the existing retaining wall of the Sims is situated for the sole purpose of allowing said retaining wall in its existing condition. Further, the Schenks do grant the Sims the right to enter onto the real estate of the Schenks described above at any reasonable time in order to maintain and repair the existing retaining wall situated on the property line between the properties owned by the Sims and the Schenks; provided, however, that the Sims shall not interfere with the quiet enjoyment and use of the Schenks' property during such time that maintenance and repairs are required on said retaining wall and shall repair any and all damage to the Schenks landscaping as a result of said maintenance and repair.


2. It is understood that the Schenks, their successors, assigns and tenants will be in no way bound to keep the retaining wall in repair; nor do the Schenks, their successors or assigns, assume any liability or responsibility to the Sims, their agents, employees, assigns, or any person due to the fact that said retaining wall encroaches onto the property of the Schenks.
3. The Sims, their successors and assigns, shall during their use of the easement for said retaining wall repair and maintain said easement in a proper, substantial, and workmanlike manner, at their own cost and expense.
4. The Sims agree to indemnify and hold harmless The City of Hoover, Alabama, First Federal Savings Bank, Cahaba Title, Inc., First American Title Insurance Company, the Schenks, their successors and assigns from any and all claims, losses, damages or expenses, including but not limited to a reasonable attorney's fees, arising out of the construction, use, maintenance or repair of said retaining wall.
5. The Schenks shall have an easement for storm water drainage into the storm water drainage catch basin situated on the eastern side of the Sims property. It shall be the responsibility and duty of the Sims to keep the storm water drainage catch basin described above free and clear of debris so as to avoid obstructing the free flow of storm water runoff into the basin. The Sims understand that the storm water drainage catch basin will not function properly if debris is allowed to collect around the mouth of the basin or become lodged in the basin. Any maintenance and/or repairs to the basin shall be the responsibility of the Sims and shall not obstruct the free flow of water from the Schenks' property to said basin.

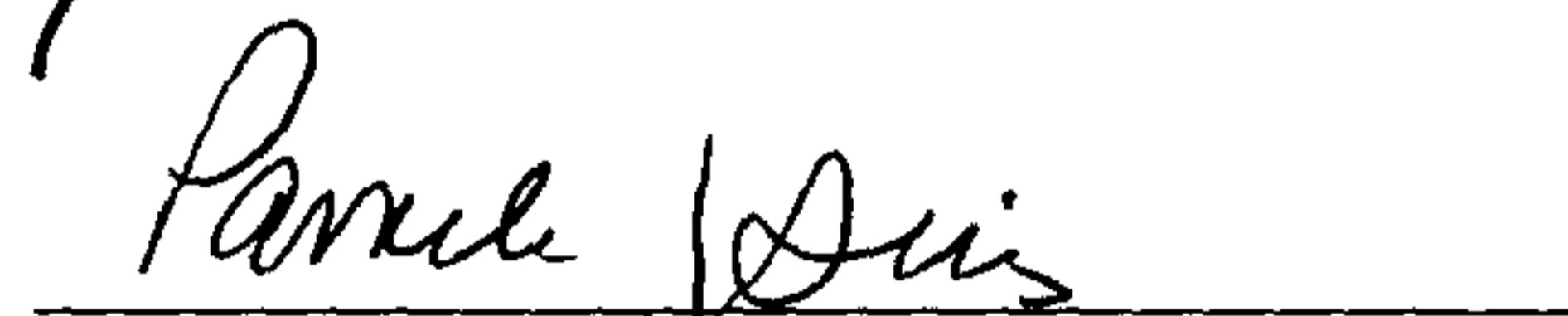
6. The Schenks shall not be responsible for any maintenance or repair to the drainage basin, but shall have the right to enter the property of the Sims at reasonable times in order to clean the debris or obstruction from the basin from time to time, if the Schenks deem such action to be necessary.
7. This agreement between the parties shall constitute a covenant running with the land and shall inure to the benefit of the successors and assigns to the undersigned and all future owners of said lots.

In Witness Whereof, the parties hereto have hereunto set their signatures and seals, this the 4th day of June, 2002.


James M. Schenk


Susan S. Schenk


Kevin M. Sims

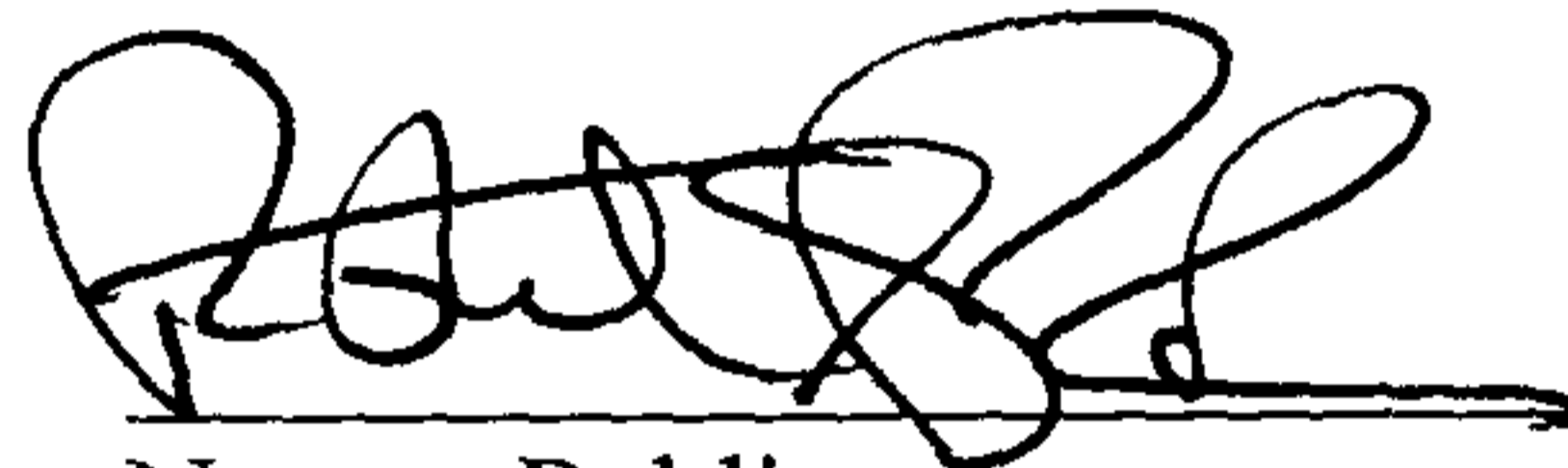

Pamela J. Sims

INDIVIDUAL ACKNOWLEDGMENT

STATE OF ALABAMA)
COUNTY OF SHELBY)

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that JAMES M. SCHENK AND SUSAN S. SCHENK, whose names are signed to the foregoing instrument, and who are known to me, acknowledged before me on this date that, being informed of the contents of the instrument, they executed the same voluntarily on the day same bears date.

Given under my hand and seal of office this 4th day of June, 2002.



Notary Public

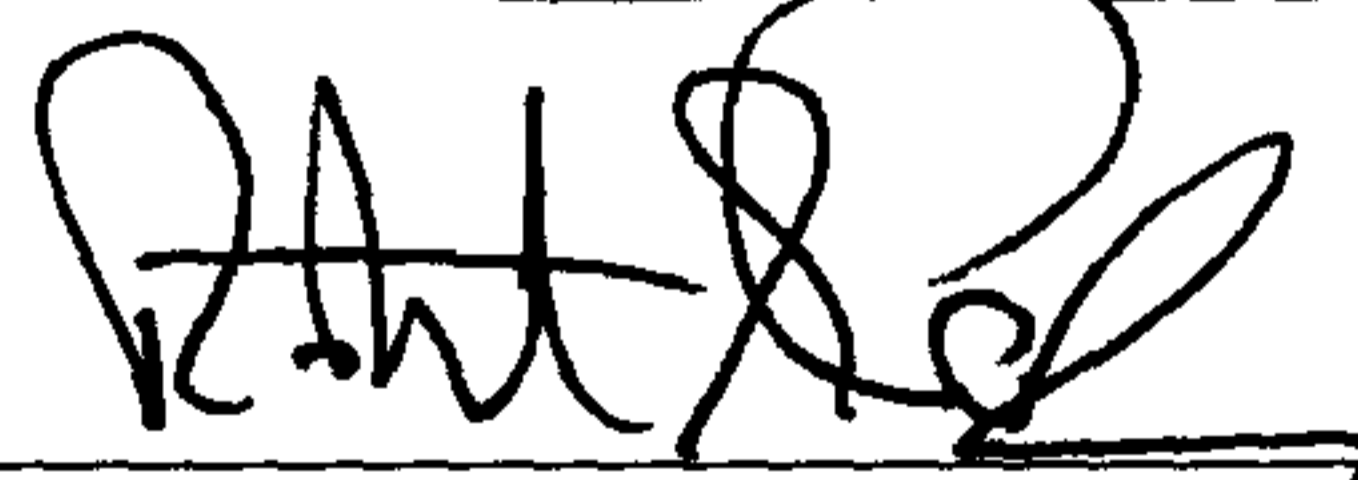
My commission expires: 2/11/02

INDIVIDUAL ACKNOWLEDGMENT

STATE OF ALABAMA)
COUNTY OF SHELBY)

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that KEVIN M. SIMS AND PAMELA J. SIMS, whose names are signed to the foregoing instrument, and who are known to me, acknowledged before me on this date that, being informed of the contents of the instrument, they executed the same voluntarily on the day same bears date.

Given under my hand and seal of office this 4th day of June, 2002.



Notary Public

My commission expires: 2/11/02