

STATE OF ALABAMA )  
:  
COUNTY OF SHELBY )

**LEASE AGREEMENT**

THIS LEASE AGREEMENT (this "Agreement") is made and entered into as of the 2nd day of August, 2002 by and between GREYSTONE DEVELOPMENT COMPANY, LLC, an Alabama limited liability company ("Landlord"), and DAVID G. HOLCOMB and wife, GINGER J. HOLCOMB ("Tenants").

**R E C I T A L S:**

Landlord desires to lease to Tenants and Tenants desire to rent and accept from Landlord that certain real property (the "Property") situated in Shelby County, Alabama which is more particularly described in Exhibit A attached hereto and incorporated herein by reference.

NOW, THEREFORE, for and in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Lease of Property. Subject to all of the terms, covenants and conditions set forth in this Agreement, Landlord hereby leases to Tenants, and Tenants hereby rent and accept from Landlord, the Property.

2. Term. The term of this Agreement shall commence on the date hereof and shall continue thereafter until 11:59 p.m. on December 31, 2098 (the "Term"), unless sooner terminated as hereinafter provided.

3. Rent. Rent in the amount of \$1.00 per year shall be due and payable in advance by Tenants to Landlord throughout the Term, commencing on the commencement date of the Term and on each anniversary date thereafter throughout the Term. Tenants may, in their sole and absolute discretion, prepay all or any portion of the rent due hereunder at any time.

4. Utilities. To the extent Tenants elect to construct, install or maintain any utility lines, pipes, conduit, equipment, machinery or appurtenances on the Property, then all such utility lines constructed or installed on the Property shall be constructed and installed in accordance with the terms and provisions of Paragraph 3 of that certain Agreement dated as of June 15, 1999 between Landlord and Tenants (the "Prior Agreement"). Tenants acknowledge that the Property is subject to, and agrees to abide by all of the terms of, that certain Declaration of Restrictions recorded as Instrument #1995-21524 in the Office of the Judge of Probate of Shelby County, Alabama, as amended by First Amendment thereto recorded as Instrument #1998-32193 in said Probate Office (collectively, the "Restrictions").

5. Condition of Property. Tenants acknowledge and agree that (a) Landlord has not made and does not make any covenant, representation or warranty, either express or implied, regarding the physical condition of the Property or any portion thereof, the suitability of the Property for any particular purpose or use whatsoever, the zoning of the Property, whether the Property is located in a flood plain or flood prone area or is subject to surface or subsurface contamination by toxic or hazardous waste or with respect to any other matters affecting the Property or Tenants' contemplated use thereof, (b) Tenants have been given the absolute and unfettered right to inspect the Property in order to satisfy themselves of all conditions and other aspects of the Property and (c) Tenants acknowledge and agree that the Property is leased and accepted by Tenants in its present condition, "AS IS", without representation or warranty as to any matter by Landlord.

✓  
Kathryn Carver  
1000 Urban Center Drive  
Ste 250  
B'ham 35242  
1/HOLCOMB.LEASE.DOC

6. Insurance.

(a) Tenants shall maintain in full force and effect throughout the Term, at their sole cost and expense, for the mutual benefit of Landlord and Tenants, a policy or policies of commercial general liability insurance, provided on an occurrence basis, with minimum limits of One Million Dollars (\$1,000,000.00), insuring against the liability of Tenants and their respective agents, employees, representatives and invitees for personal or bodily injury or property damage arising out of or in connection with Tenants' use or occupancy of the Property. Such policy shall provide for contractual liability coverage and shall name Landlord and its lenders and mortgagees as additional insureds thereunder. Certified copies or certificates of such insurance coverage shall be provided to Landlord by Tenants at least annually on or before the expiration date of the then applicable policy. Tenants agree to immediately notify Landlord of any expiration, material changes, cancellation, termination or reduction in coverage limits of the insurance policies required to be maintained hereunder by Tenants.

(b) Tenants acknowledge and agree that Landlord shall not be obligated to maintain any type of insurance coverage with respect to the Property including, without limitation, any type of fire and extended coverage insurance policy covering the Property.

(c) Tenants hereby indemnify, agree to defend and hold Landlord harmless from and against (i) any and all claims, demands, liabilities, losses, damages, costs and expenses (including reasonable attorneys' fees) of any nature arising out of or in connection with any penalty, damages or charges imposed or levied against Landlord or the Property by any governmental authority as a result of Tenants' failure to comply with all such governmental regulations and requirements and (ii) any injury or damage to person or property occurring in, on or about the Property except to the extent caused by the gross negligence or willful misconduct of Landlord, its agents, employees and invitees. Tenants, jointly and severally, for themselves and their respective insurers, do hereby waive and release Landlord, its officers, directors, members, managers, agents, employees, invitees, contractors and their respective successors and assigns, from any and all liabilities, losses or claims of any nature arising out of any loss, damage, injury (including death) to Tenants, their family members or to any of Tenants' personal property on or from the Property, except to the extent caused by the gross negligence or willful misconduct of Landlord, its agents, employees or invitees.

7. Maintenance and Repair. Tenants shall, at their sole cost and expense, keep and maintain the Property in good repair and condition at all times during the Term. Landlord shall have no obligation to maintain, repair, replace or otherwise undertake any maintenance or repair obligations with respect to the Property.

8. Taxes. Tenants shall, throughout the Term, pay all real estate ad valorem taxes and assessments, fire district and library dues and assessments with respect to the Property on or prior to the delinquency of the same, and provide to Landlord written evidence of such payments.

9. Surrender of Possession. Upon the expiration of the Term, Tenants shall remove all of Tenants' property from the Property and deliver possession of the Property to Landlord in a clean condition and in good order and repair substantially similar to the same condition and state of repair as existed on the commencement of the Term of this Agreement.

10. Governmental Requirements. During the Term, Tenants agree to abide by and otherwise comply with all governmental requirements applicable to the use and occupancy of the Property.

11. Default. In the event Tenants fail to promptly perform or observe any of their obligations under this Agreement and such failure continues for more than ten (10) days following written notice of the same from Landlord to Tenants, then Tenants shall be deemed in default hereunder ("Default") and, in addition to all of the rights and remedies provided in this Paragraph 11, Landlord may terminate this Agreement on written notice to Tenant or exercise any other rights and remedies available to Landlord at law or in equity; provided, however, that Tenants shall

have thirty (30) days following the giving of notice to Tenants as required herein within which to cure any Default hereunder. All costs and expenses, including court costs and reasonable attorneys' fees, incurred by Landlord in enforcing any of the terms and provisions of this Agreement shall be due and payable on demand by Tenants, jointly and severally.

12. Assignment and Subleasing. Tenants may not assign any of their respective rights under this Agreement nor may Tenants sublet any portion of the Property without the prior written consent of Landlord, which consent may be withheld in the sole and absolute discretion of Landlord; provided, however, that in the event Tenants transfer and convey to any third party any portion of that certain real property owned by Tenants which is more particularly described in Exhibit B attached hereto and incorporated herein by reference (the "Tenants' Lots"), then Tenants may transfer and assign this Agreement to such grantee so long as such grantee executes an assignment and assumption agreement assuming all of the obligations of Tenants hereunder from and after the date of such assignment.

13. Title and Quiet Possession. Landlord represents and warrants to Tenants that Landlord has good and marketable title in and to the Property, free and clear of any mortgage, lien or similar encumbrance other than real estate ad valorem taxes and fire and library district dues and assessments for the current year and all subsequent years thereafter and all other matters of record in existence as of June 15, 1999 (collectively, the "Permitted Exceptions"). Subject to the terms and provisions of the Restrictions and the rights and interests created by the Permitted Exceptions, Landlord further agrees to keep Tenants, and their respective heirs, executors, personal representatives and assigns, in quiet possession of the Property for and during the Term of this Agreement. If, at any time following the execution of this Agreement, Tenants are notified, either verbally or in writing, by any of the other property owners subject to the Restrictions that this Agreement constitutes a violation of the Restrictions, then Landlord and Tenants agree (a) to enter into an easement agreement pursuant to which Tenants will be granted an exclusive and permanent easement over and upon the Property, which easement agreement will also provide that the same will automatically terminate upon the satisfaction of the conditions set forth in Paragraph 4(a) of the Prior Agreement and conveyance of the Property to Tenants as provided therein and shall otherwise contain substantially the same terms and provisions of the Easement Agreement, as defined in the Prior Agreement, and (ii) this Agreement shall thereafter be terminated.

14. Notices. Any request, demand, authorization, direction, notice, consent, waiver or other document provided or permitted by this Agreement to be made upon, given or furnished to, or filed with, Landlord or Tenants must be in writing and served on the parties hereto at the following addresses:

Landlord:  
Greystone Development Company, LLC  
3595 Grandview Parkway, Suite 400  
Birmingham, Alabama 35243  
Attention: Mr. Lewis M. Gwaltney, Jr.  
Facsimile: (205) 443- 4615

Tenants:  
Dr. and Mrs. David G. Holcomb  
3421 Saddle Creek Trail  
Birmingham, Alabama 35242  
Facsimile: (205) 933-2676

All notices required or permitted to be given hereunder shall be deemed to have been sufficiently given or served when either (a) deposited in the United States mail for first-class, registered or certified mail delivery with postage prepaid and addressed to the address set forth above, in which case notice shall be deemed given upon deposit of the same in the United States mail, (b) delivered by hand delivery to the address set forth above, in which event notice shall be deemed given upon personal delivery of such notice to such person or (c) sent during normal business hours of any regular business day by facsimile transmission to the facsimile number set forth above, which notice shall be

deemed to have been given upon transmission of such facsimile notice. Any of such parties may change the address or number for receiving any such notice or other document by giving notice of the change to the other parties named in this Paragraph 14.

15. Miscellaneous. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Alabama. This Agreement may be amended or modified only by a written instrument executed by both Tenants and Landlord. The captions and headings used herein are included for convenience and general reference only and shall not be construed to describe, define or limit the scope, intent or construction of this Agreement. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, successors and assigns. Time is of the essence in the performance of all obligations of each party to this Agreement. This Agreement constitutes the entire and complete agreement between the parties hereto with respect to the lease and use of the Property and supersedes any prior oral or written agreements or understandings between the parties with respect to the lease and use of the Property. It is expressly agreed that there are no verbal understandings or agreements which in any way change the terms, covenants and conditions herein set forth. If any provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then the remainder of this Agreement or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each provision shall be valid and enforceable to the fullest extent permitted by law.

16. Early Termination of Agreement. The parties hereto acknowledge and agree that this Agreement arises out of the Prior Agreement. If all consents and approvals are obtained by Tenants pursuant to Paragraph 4(a) of the Prior Agreement to the transfer, conveyance and resubdivision of the Property, as required by the terms and provisions of said Paragraph 4(a) of the Prior Agreement, then (a) Landlord agrees to transfer and convey the Property to Tenants by statutory warranty deed in accordance with the terms and provisions of said Paragraph 4(a) of the Prior Agreement and (b) this Agreement shall automatically terminate, be deemed null and void and of no further force or effect.

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

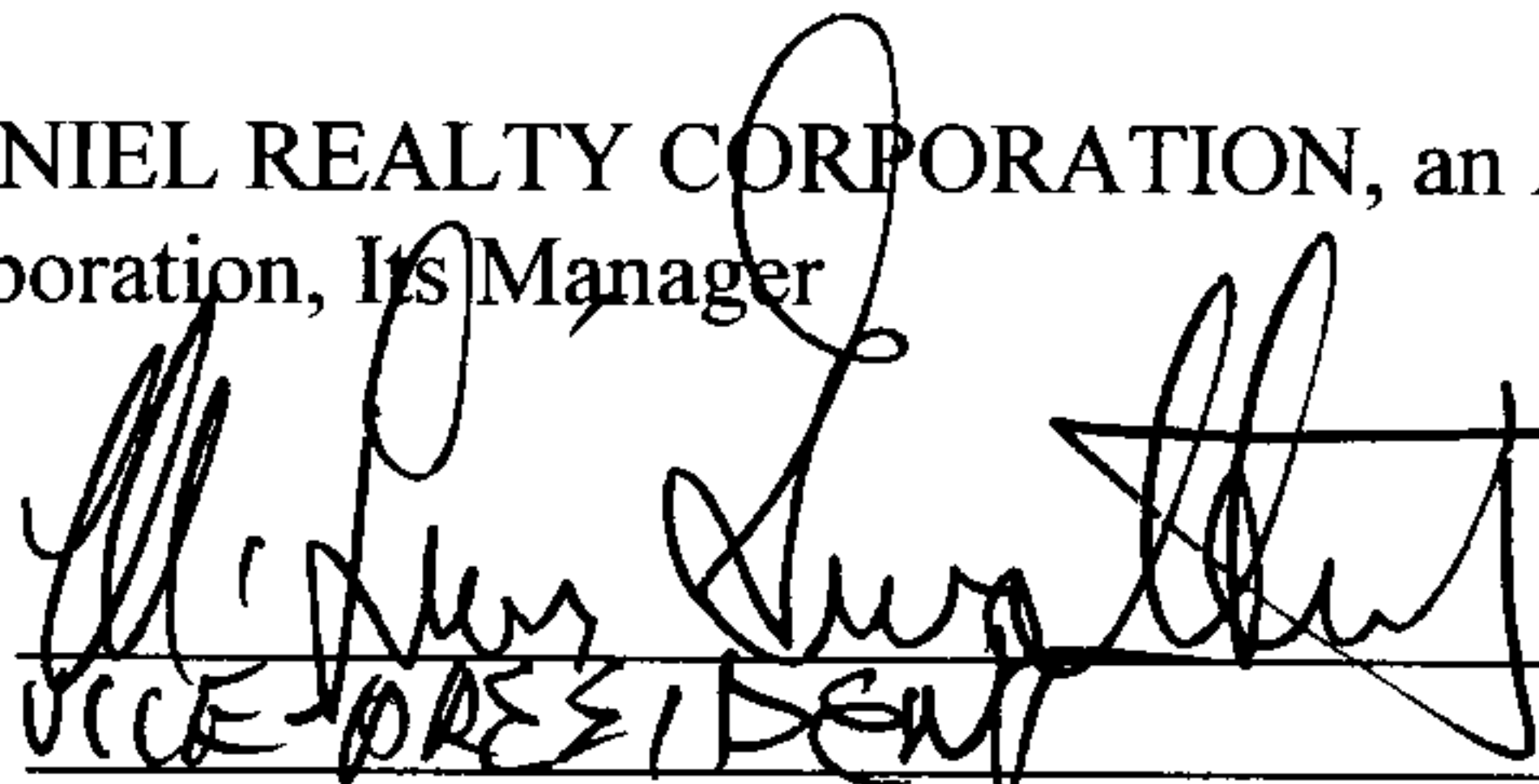
**LANDLORD:**

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

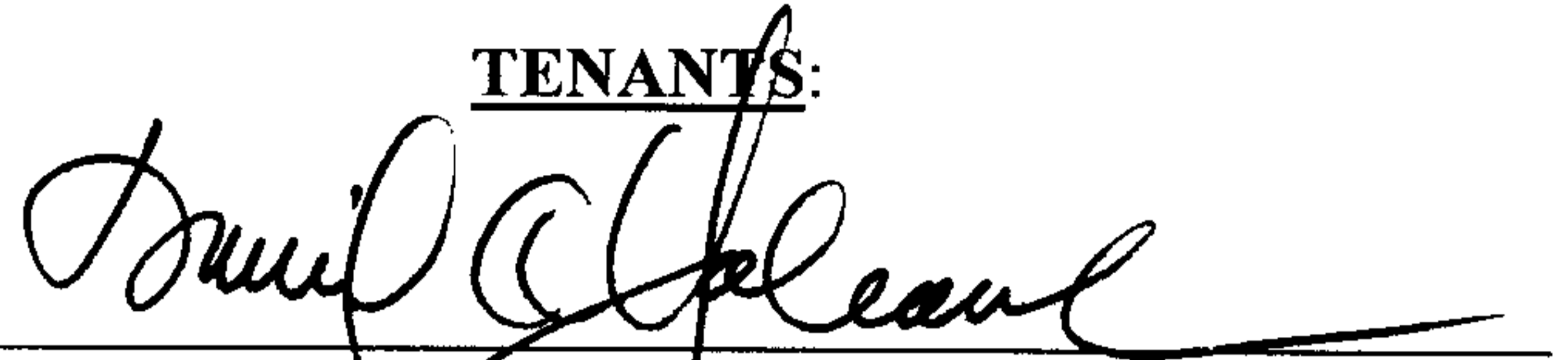
By: DANIEL REALTY CORPORATION, an Alabama  
corporation, Its Manager


By:

Its:

  
VICE PRESIDENT

TENANTS:

  
\_\_\_\_\_  
David G. Holcomb

  
\_\_\_\_\_  
Ginger J. Holcomb

STATE OF ALABAMA       )  
                                     :  
SHELBY COUNTY        )

M. Dennis Walther I, the undersigned, a notary public in and for said county, in said state, hereby certify that Vice President whose name as Vice President of DANIEL REALTY CORPORATION, an Alabama corporation, as Manager of GREYSTONE DEVELOPMENT COMPANY, LLC, an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of such corporation in its capacity as manager of said limited liability company.

Given under my hand and official seal this 2nd day of August, 2002.

Kathy S. Gamm  
Notary Public

[NOTARIAL SEAL]

My Commission Expires: 1/14/03

STATE OF ALABAMA       )  
                                     :  
SHELBY COUNTY        )

I, the undersigned, a notary public in and for said county, in said state, hereby certify that David G. Holcomb and wife, Ginger J. Holcomb, whose names are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of said instrument, they executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 2nd day of August, 2002.

Kathy S. Gamm  
Notary Public

[NOTARIAL SEAL]

My commission expires: 1/14/03

THIS INSTRUMENT PREPARED BY  
AND UPON RECORDING SHOULD BE  
RETURNED TO:  
Stephen R. Monk, Esq.  
Bradley Arant Rose & White LLP  
One Federal Place  
1819 Fifth Avenue North  
Birmingham, Alabama 35203

## **EXHIBIT A**

### **LEGAL DESCRIPTION OF PROPERTY**

A parcel of land situated in the Southwest quarter of the Northeast quarter of Section 22, Township 18, South Range 1 West, Shelby County, Alabama being more particularly described as follows:

Commence at a 5/8 inch rebar found locally accepted to be the Southwest corner of said quarter-quarter section; thence run North along the West line of said quarter-quarter section for a distance of 206.76 feet to the point of beginning; thence continue along last stated course for a distance of 1072.68 feet to the Northwest corner of said quarter-quarter section; thence turn an angle to the right of 132 degrees, 09 minutes, 10 seconds, and run in a Southeasterly direction for a distance of 169.67 feet to a point on a curve to the left having a central angle of 33 degrees, 30 minutes, 46 seconds and a radius of 388.85 feet; thence turn an angle to the tangent of said curve to the right of 90 degrees, 00 minutes, 00 seconds and run in a Southwesterly direction along the arc of said curve for a distance of 227.44 feet to a point; thence run tangent to last stated curve in a Southwesterly direction for a distance of 164.07 feet to a point on a curve to the left having a central angle of 25 degrees, 37 minutes, 38 seconds and a radius of 300.01 feet; thence run in a Southwesterly to Southeasterly direction along the arc of said curve for a distance of 134.19 feet to a point; thence run tangent to last stated curve in a Southeasterly direction for a distance of 115.58 feet to a point on a curve to the right having a central angle of 43 degrees, 43 minutes, 46 seconds and a radius of 413.15 feet; thence run in a Southeasterly to Southwesterly direction along the arc of said curve for a distance of 315.32 feet to a point; thence run tangent to last stated curve in a Southwesterly direction for a distance of 49.48 feet to the point of beginning. Said parcel containing 1.03 acres, more or less., being a portion of A Resurvey of a Common Area, Greystone Legacy, 2nd Sector, as recorded in Map Book 29, Page 137, in the Probate Office of Shelby County, Alabama.

**EXHIBIT B**

**LEGAL DESCRIPTION OF TENANTS' LOTS**

Lot 1-A, according to the Resurvey of Lots 1 & 2, Amended Map of Saddle Creek Run, as recorded in Map Book 19, Page 109 in the Office of the Judge of Probate of Shelby County, Alabama (the "Probate Office"); and

Lot 2B, according to the Resurvey of Lot 3A of a Resurvey of Lot 3, Amended Map of Saddle Creek Run, as recorded in Map Book 28, Page 147 in the Probate Office.