

*This Instrument Prepared By, and
After Recording Return To:*

**Elene G. Garrison
Burr & Forman LLP
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Birmingham, Alabama 35203
Telephone: (205) 251-3000**

STATE OF ALABAMA)
)
SHELBY COUNTY)

DECLARATION OF EASEMENT

THIS DECLARATION is made as of the 13th day of June, 2003, is by **BAKER SEAFOOD, INC.**, an Alabama corporation ("Grantor").

WHEREAS, Grantor contemporaneously herewith is selling to **TACALERA, LLC**, an Alabama limited liability company ("Grantee"), that certain parcel of real estate which is more particularly described on Exhibit A attached hereto and made a part hereof (the "Tacalera Parcel"); and

WHEREAS, Grantor is owner of that certain parcel of real estate adjacent to the Tacalera Parcel which is more particularly described on Exhibit B attached hereto and made a part hereof (the "Baker Parcel"); and

WHEREAS, Grantor has been using and desires to continue the use of a portion of the Tacalera Parcel for the underground transmission of utilities; and

WHEREAS, Grantor wishes to establish certain easements burdening the Tacalera Parcel for the benefit of and appurtenant to the Baker Parcel;

NOW, THEREFORE, in consideration of the sum of Ten and No/100 Dollars in hand paid to Grantor, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor does hereby grant, bargain, sell, convey, declare and establish the following easements and covenants:

1. **Underground Utilities Easement.** Grantor does hereby declare, grant and establish for the benefit of the Baker Parcel a perpetual, non-exclusive easement and license appurtenant to the Baker Parcel to use for the underground transmission of utilities that certain ten foot wide easement area (the "Easement Area"), granted to Alabama Power Company by Grantor on July 8, 2002, said easement being recorded in the Office of the Judge of Probate of Shelby County, Alabama, as Instrument Number 20020821000398790 (the "Alabama Power Easement"). Grantor shall be entitled to make use of the Easement Area solely for the purposes

set forth in the Alabama Power Easement, including, among other things, the installation and maintenance of underground facilities for the transmission and distribution of electric power to the Baker Parcel. Grantor shall have the right to enter onto the Tacalera Parcel for the purpose of installing and maintaining such underground facilities, provided that any such activity shall be coordinated with the owner of the Tacalera Parcel and carried out in a manner calculated to minimize any disruption to any business then operated on the Tacalera Parcel, and provided further that upon completion of such installation and/or maintenance Grantor shall promptly restore the surface of the Tacalera Parcel to such condition as it existed prior to Grantor's entry for the purposes herein described.

2. **Relocation of Easement Area.** Grantor does hereby agree that the owner of the Tacalera Parcel shall, at its sole cost and expense and with the prior consent and participation of Alabama Power Company, be entitled to cause the Easement Area and all utility structures located therein to be relocated (i) to another area of the Tacalera Parcel, or (ii) to an area outside the Tacalera Parcel, so long as in either case such relocation does not materially interrupt the distribution of utility services to the Baker Parcel or otherwise materially diminish the benefits intended to be conferred upon the Baker Parcel by the Alabama Power Easement. Any such construction activities on the Baker Parcel, including Lot 4-A, shall be done only with the prior approval of Grantor, and such construction activities will not cause the removal or damage to any improvements the Baker Parcel, including but not limited to the dumpster pad and enclosure on Lot 4-A, the curb, parking and paving, and landscaping on Lot 4-A. In the event any damage caused to the Baker Parcel or any business located on the Baker Parcel, then the party causing such damage shall be responsible to the damaged party, and prior to such work the party causing or requesting such work shall indemnify the owner of the Baker Parcel for any work to be done in accordance herewith. Any such relocation of the Easement Area shall be coordinated with the owner of the Baker Parcel and carried out in a manner calculated to minimize any disruption to any business then operated on the Baker Parcel. Upon any such relocation, the owners of the Baker Parcel and the Tacalera Parcel shall enter into and cause to be recorded an appropriate instrument amending this Declaration to reflect the relocation of the Easement Area.

3. **Grantor's Interest.** Grantor covenants with that it is the owner in fee simple of the Baker Parcel and the Tacalera Parcel, and that Grantor has good right and unrestricted authority to execute this Declaration and to grant, declare and establish the easements and other agreements herein set forth.


4. **Agreements Run With Land.** Both the benefits and the burdens of all easements, covenants and restrictions established by this Declaration shall run with and bind the lands described herein, and shall be binding upon and inure to the benefit of any and all owners thereof and their respective tenants, licensees, invitees, employees, personal representatives, heirs, successors and assigns.

5. **Interpretation.** This Declaration and the easements, covenants and restrictions set forth herein shall not be strictly construed, but shall be interpreted so as to allow the owners of all lands affected hereby to enjoy the commercially reasonable use and benefit of the same while fulfilling the essential purposes of such easements, covenants and restrictions.

IN WITNESS WHEREOF, Grantor has caused this Declaration to be executed by its duly authorized officer as of the day and year first above written.

GRANTOR:

BAKER SEAFOOD, INC., an Alabama corporation

By: 
Print Name: Christopher W. Baker
Title: Vice President

STATE OF ALABAMA
JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Christopher W. Baker whose name as Vice President of Baker Seafood, Inc., an Alabama corporation, 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/she, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and seal, this 13th day of June, 2003.

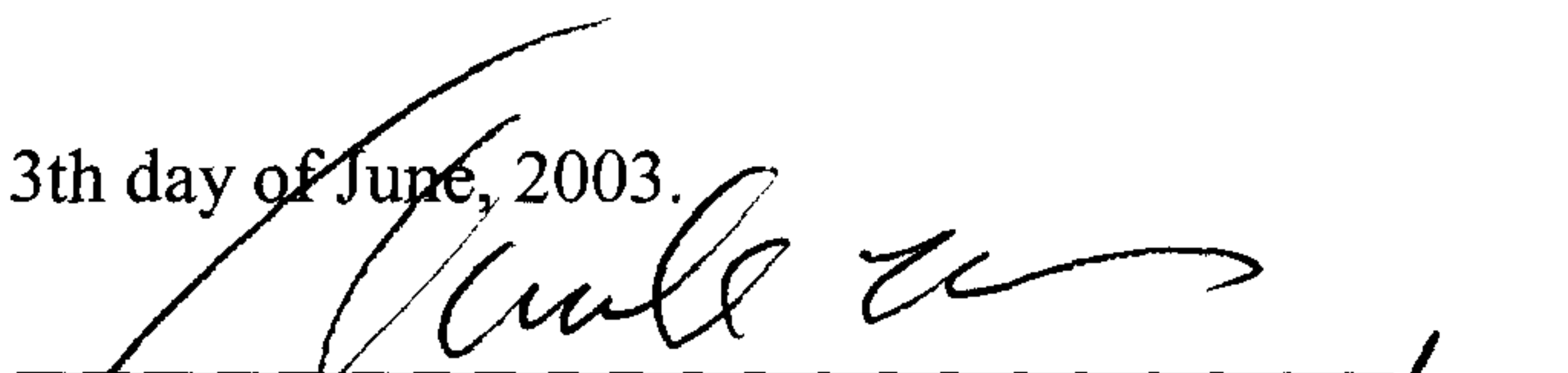

NOTARY PUBLIC
My Commission Expires: 12/28/03

EXHIBIT A
Legal Description of the Tacalera Parcel

Lot 5A according to Baker Seafood, Inc Resurvey (Being a Resurvey of Lots 4 and 5, Wal-Mart Supercenter #3271 Subdivision, as recorded in Map Book 27, page 117) as recorded in Map Book 31 page 92, in the Office of the Judge of Probate of Shelby County, Alabama.

EXHIBIT B
Legal Description of the Baker Parcel

Lot 4A according to Baker Seafood, Inc Resurvey (Being a Resurvey of Lots 4 and 5, Wal-Mart Supercenter #3271 Subdivision, as recorded in Map Book 27, page 117) as recorded in Map Book 31 page 92, in the Office of the Judge of Probate of Shelby County, Alabama.