

## DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS

THIS DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS (this "Declaration") is made and entered into as of the 21<sup>st</sup> day of August, 2003, by and between The Crossroads at Greystone, LLC, an Alabama limited liability company, Xpress Partners, LLC, an Alabama limited liability company, and Tiengkongkarn (hereinafter defined), as follows:

WHEREAS, The Crossroads at Greystone, LLC, an Alabama limited liability company, as owner of the Developer Tract (hereinafter defined), Tiengkongkarn, as owner of Outparcel I, and Xpress Partners, LLC, an Alabama limited liability company, as owner of Outparcel II, both of which are adjacent to the Developer Tract (all as hereinafter defined) desire to enter into this Declaration for the purpose of establishing certain easements, operating covenants and restrictions which will govern the development and operations of their properties herein described as an integrated shopping center development;

NOW, THEREFORE, in consideration of One Dollar and other due, good and valuable considerations, the parties agree as follows:

### WITNESSETH:

Definitions. The following terms used herein shall be defined as follows:

"Beneficiaries" shall mean any mortgagee, tenant, or occupant of the owners of the Parcels, their personal representatives, heirs, successors, and assigns, and when appropriate to the employees, invitees, customers, and suppliers of each.

"Detention Area" shall have the meaning assigned to it in Section 6 hereof.

"Developer" shall mean The Crossroads at Greystone, LLC, an Alabama limited liability company, and its successors and assigns.

"Developer Tract" shall mean the approximately 5.5 acres of land owned by Developer described in Exhibit A attached hereto and made a part hereof upon which Developer has constructed a 43,820 square foot shopping center (sometimes also referred to as the "Shopping Center"), as depicted on Exhibit B and identified as "Developer Tract".

"Hoover" shall mean the City of Hoover.

"Outparcel I" shall mean the approximately 1.2 acres of land owned by Tiengkongkarn described in Exhibit C attached hereto and made a part hereof and shown on Exhibit B as "Outparcel I".

"Outparcel II" shall mean the approximately .56 acres of land owned by Xpress described in Exhibit D attached hereto and made a part hereof and shown on Exhibit B as "Outparcel II".

"Private Road" shall mean the road previously constructed by Developer providing access from Highway 280 and Highway 119 as shown on Exhibit B and identified as "Private Road" or "Privately Maintained Road".

"Owner" shall mean the owner of a Parcel, and such owner's personal representatives, heirs, successors and assigns.

"Parcels" shall mean the Developer Tract, Outparcel I and Outparcel II (each of which are sometimes referred to as a "Parcel").

"Shopping Center" shall mean the Developer Tract.

"Site Plan" shall mean the survey dated April 4, 2003, prepared by the Surveyor, and attached hereto marked as Exhibit B.

"Surveyor" shall mean Carl Daniel Moore.

"Tiemkongkarn" shall mean, collectively, Anucha Tiemkongkanchna, an individual resident of the State of Alabama, Maneesri Tiemkongkarn, an individual resident of the State of Alabama, and Antinin Tiemkongkarn, an individual resident of the State of Alabama, and their successors and assigns.

"Xpress" shall mean Xpress Partners, LLC, an Alabama limited liability company.

1. Plan Approval/Signs/Building Restrictions. No building, sign, or other improvement shall be erected, remodeled, expanded, repainted, or altered on Outparcel I or Outparcel II without plans, specifications, and architectural designs therefor (including but not limited to a description of parking areas, signage, curb cuts, traffic patterns, landscaping, building height and building areas) having been first submitted to and approved by Developer in writing prior to commencement of construction, which approval shall not be unreasonably withheld so long as the improvements proposed for Outparcel I or Outparcel II, as the case may be, are of at least the same quality (in materials and construction), are located within a single story structure, and are architecturally compatible with (in color and design), the improvements located on the Developer Tract and so long as they comply with Hoover's zoning and subdivision regulations and the terms of paragraph 2 ("Use Restrictions") hereof. In no event shall any signs on Outparcel I or Outparcel II interfere with the access, ingress or egress to and from the Developer's Tract, nor shall any such signs be mobile or trailer type signs. The plans must be approved by Developer no later than seven (7) days following receipt of such plans, otherwise, the Developer's approval shall be presumed given.

2. a. Use Restrictions. Use Restrictions only between the Developer Tract and Outparcel I shall apply as follows:

Subject to the conditions stated herein, Outparcel I shall have the exclusive right to operate a restaurant exclusively serving Thai food. Developer will not directly or indirectly permit any party to use any shop at the Shopping Center as a Thai restaurant. Developer will not directly or indirectly permit any party to use as a Thai restaurant any property located within one thousand (1,000) feet of any exterior boundary of the Shopping Center, and that such property is currently or hereafter owned or controlled directly or indirectly by Developer or any entity controlled by, controlling, or under common control with Developer. This exclusive right shall continue for a period of ten (10) years from the date of this Declaration so long as the Owner of Outparcel I shall continuously operate a Thai restaurant on Outparcel I. Should the Thai restaurant not stay in continuous operation, the exclusive right granted herein shall automatically terminate.

b. Prohibitions. Without the prior written consent of Developer, which may be withheld or conditioned in Developer's sole discretion Outparcel I shall not be used for any of the following:

- (1) spa, health, sports, or exercise club;
- (2) lounge, bar, "teen lounge" or social encounter club;
- (3) bowling alley;
- (4) pawn shop;
- (5) skating rink;
- (6) bingo or electronic or other game parlor;
- (7) theater (either motion or legitimate);
- (8) area or space for the sale or display of pornographic or "adult" material;
- (9) abortion clinic; HIV clinic; medical offices other than a total of two (2) of the following uses not exceeding 3,600 square feet in the aggregate; physician's office, dentist's office, optometrist's office, chiropractor's office;
- (10) automobile dealership, sales of vehicles, mobile homes, manufactured homes;
- (11) church, synagogue or other place of worship;



- (12) manufacturing or storage business;
- (13) public auditorium or other public entertainment facility;
- (14) dry cleaning processing plant or dry cleaning business processing on-site; or
- (15) any use that would violate any exclusive granted to a tenant at the Shopping Center.

Without limiting the foregoing, Outparcel I may not be used for any use or for any purpose or purposes which produce or emit gas, dust, dirt or fly ash in excessive quantities, or any fire hazards, nor shall Outparcel I or any part thereof be used as or for assembly, manufacturing, distilling, refining, smelting, agriculture or mining, mobile home or trailer court, junk yard, animal raising or stockyard, drilling, dumping or disposing, incinerating or reduction of garbage, massage parlor, pool or billiard establishment, shooting gallery, drug rehabilitation center or "halfway" house, off track betting parlors, or bar (except as incidental to a full service restaurant).

3. No Cross Parking. There shall be no cross parking of any kind allowed between the Developer Tract, Outparcel I and Outparcel II.

4. Maintenance. The Owner of each Parcel shall keep and maintain its Parcel in a clean and sightly condition. Such obligations shall include, without limitation, the obligation to (1) maintain all buildings and improvements in a good condition, (2) maintain paved surfaces in a good condition including restriping of same as necessary; (3) remove all papers, mud and sand, underbrush, debris, filth and refuse and police or sweep the area to the extent reasonably necessary to keep the Parcel in a clean and orderly condition; (4) maintain all landscaped areas, make such replacements of shrubs and other landscaping as is necessary, plant grass or other suitable ground cover on any vacant areas and keep all grass or other cover mowed and trimmed in a clean and sightly condition; and (5) maintain in good operating order all lighting, directional signs, markers, sewer, electricity, natural gas, water, telephone and other utility lines, pipes and conduits crossing the Parcel and/or serving any improvements located thereon, except utility lines and equipment owned by public utilities. If any Owner defaults under this provision, and fails to cure such default after 30 days' prior written notice of such default, the Developer, or in the case the Developer does not bring such an action, then any nondefaulting Owner, shall have the right (but not the obligation) to perform such maintenance, in which case the defaulting Owner shall reimburse Developer or any nondefaulting Owner, as the case may be, for the cost of the same, plus an administrative charge of fifteen percent (15%) of such costs, together with interest on such sum (including the administrative cost) at the prime rate of interest of SouthTrust Bank of Alabama, N.A., at its Birmingham office, plus four percent (4%); provided that no such administrative charge shall apply with respect to Developer or the Developer Tract. The provisions of this paragraph 4 shall not apply to any Parcel until the same is improved (with parking and building improvements). Until improved as aforesaid, each Parcel shall be maintained by the Owner thereof in a neat and tasteful manner pending its development with parking and building improvements.

5. Damage to Improvements. If any building located on the Parcel shall be damaged or destroyed (partially or totally) by fire or other casualty, then the Owner of the Parcel within a reasonable period of time from the damage or destruction, shall either (a) repair, rebuild and restore the damaged or destroyed building to a condition at least equivalent to the condition of said building just prior to said fire or casualty, or (b) raze, clear and clean the Parcel upon which the damaged or destroyed building is located and either pave the surface of the Parcel at the same grade which existed just prior to said fire or casualty, or landscape (with grass or sod) the Parcel in a tasteful manner.

6. Easements. The Owners hereby declare, grant and convey for the benefit of the Parcels the following reciprocal, joint, mutual and nonexclusive easements:

a. Drainage and Utility Easements. Perpetual easements for the purposes of drainage of surface waters over, across and under the Parcels in accordance with the Site Plan and the right to install, maintain, repair, remove and replace the Detention Area (as hereinafter defined) and other utilities to serve the Parcels in accordance with the Site Plan (including water lines, telephone lines, gas lines, sewer lines, electric lines, and drainage lines and systems), provided the same does not unreasonably interfere with the conduct of business operations on any Parcel and provided all costs associated with same and the cost of any damage to any Parcel by virtue thereof is borne by the Owner performing or requiring same.

The storm water drainage for the Shopping Center, Outparcel I and Outparcel II have been designed in such a way as to drain into a 13,068 square foot storm water detention area located on Outparcel I, as depicted on the Site Plan and as described on Exhibit E hereof (the "Detention Area"). The parties hereby grant, bargain, sell, convey, declare and establish reciprocal, permanent easements for the continued existence, maintenance, upkeep and operation of the Detention Area and the pipes leading thereto on their respective parcels. Except for the Detention Area, the Owner of each Parcel shall maintain any and all drainage facilities or devices located on their respective Parcel which are necessary or which are required by any governmental authority to receive and channel the surface water drainage from the improvements on such Parcel to the Detention Area. Such facilities shall not impair parking requirements elsewhere herein defined or violate the permitted uses elsewhere defined herein.

The Owners agree that the cost associated with maintaining, repairing and insuring the Detention Area, and paying the ad valorem taxes charged on 13,068 square feet (based on vacant property rates) shall be shared on a pro rata basis based upon the relation between the square foot area of each Owner's Parcel to the square foot area of all the Owners' Parcels, except that in calculating Outparcel I, 13,068 shall be subtracted therefrom. Accordingly, the Developer Tract's prorata share is 79%, Outparcel I is 13% and Outparcel II is 8%.

Developer shall be responsible for maintaining the Detention Area and shall be reimbursed quarterly for the cost associated with such maintenance. Tiengkongkarn shall carry a minimum of \$1 Million Dollar liability insurance to cover the Detention Area (which shall be



separately scheduled). Tiemkongkarn shall be entitled to reimbursement for such insurance cost on such prorata basis in the same manner. Tiemkongkarn shall also be entitled to be reimbursed prorata for the ad valorem taxes charged on 13,068 square feet (based on vacant property rates) of Outparcel I.

During construction of the improvements to be constructed on Outparcel I, Tiemkongkarn shall use its best efforts to keep silt, building debris and material from entering the Detention Area and shall be solely responsible for all costs associated with removal of such construction silt, debris and material.

Promptly after completion of the improvements on Outparcel I, Tiemkongkarn shall construct a six (6) foot high galvanized chain-link fence, with a double gate, around the Detention Area and the cost of such fence shall be prorated amongst the Owners in the same manner as provided hereinabove.

b. Sanitary Sewer and Pump Lot; Easement to Connect. The parties hereby grant, bargain, sell, convey, declare and establish reciprocal, permanent easements for the continued existence, maintenance, upkeep and operation of the sanitary sewer system, including but not limited to the pumping station (the "Pumping Station") located on the Pump Lot, as depicted on Exhibit B and the sewer lines existing on the Developer Tract and Outparcel II and to be installed on Outparcel I as described below, that connect from the respective Owner's Parcel to the Pumping Station. Except for the Pumping Station on the Pump Lot, the Owner of each Parcel shall maintain any and all lateral sanitary sewer lines serving their respective Parcel.

Developer hereby grants to the Owner of Outparcel I a permanent non-exclusive easement for a sewer line to be run from Outparcel I to the Pumping Station on the Pump Lot, as more particularly described on Exhibit F.

The Owners agree that the cost associated with (i) paying the ad valorem taxes on the Pump Lot and (ii) maintaining and repairing the Pumping Station shall be shared on a pro rata basis based upon the relation between the average annual gallonage used by each Owner to the average annual gallonage used by all the Owners, as determined by Shelby County.

Developer shall be responsible for paying the ad valorem taxes charged on the Pump Lot and maintaining the Pumping Station and shall be reimbursed annually for the tax payment and quarterly for the cost associated with such maintenance.

7. Other Perpetual Easements. The respective Owners hereby declare, grant, and convey for the benefit of the Parcels, the following perpetual, reciprocal, joint, mutual and nonexclusive easements, rights and covenants:

a. Private Road. At all times, subject however to subsections (e) and (f), an easement for free and unimpeded access for vehicular and pedestrian ingress and egress for the

benefit of all Parcels over the Private Road providing access from Highway 280 and Highway 119 as shown on Exhibit B hereto. Outparcel I shall be allowed no more than two curb openings providing access to the Private Road, as determined by Hoover, or if not under Hoover's jurisdiction, then as determined by Developer, applying sound traffic engineering standards. Outparcel II shall be allowed curb openings providing access to the Private Road, as shown on Exhibit B hereto.

b. Encroachment Easement. For the benefit of all Parcels, an easement for encroachment of improvements or pavement, but not buildings, over any common boundary line between the Parcels, which arise out of, or are necessitated by, normal construction deviations and tolerances.

c. Private Road Installation and Maintenance. The Owner of the Developer Tract shall maintain the Private Road. The cost of the maintenance of the Private Road shall be shared prorata by the Owners based on the same formula as used in prorating the cost of maintenance of the Detention Area.

d. Emergency Maintenance Easement. In the event that a condition exists on the Private Road which hereafter exists on Developer Tract, which, in the reasonable discretion of the Owner exercising such emergency maintenance easement, poses a threat or danger of property damage or personal injury, then such Owner shall have the right to repair or alleviate such emergency condition, provided such Owner shall make all reasonable attempts to notify Developer so that Developer may first have the opportunity to complete the repair. The cost of any work performed in such a manner shall be reimbursed prorata as described aforesaid and the work shall not interfere unreasonably with the conduct of business on any Parcel.

e. Temporary Closings - Maintenance. The Owner of the Developer Tract shall have the right to temporarily close any part of the common areas of the Developer Tract or the Private Road to the extent necessary to conduct routine maintenance, repairs, and alterations thereof; provided, however, that Developer shall use its reasonable efforts to perform such maintenance, repairs, or alterations, at times and in a manner so as to minimize any adverse impact on the operation of any business on any Parcel.

f. Temporary Closings to Public. The Owner of the Developer Tract shall have the right to temporarily close any part of the common areas of the Developer Tract or the Private Road as necessary to prevent the public from obtaining prescriptive rights therein, provided that (i) such closure does not exceed the minimum time period required pursuant to applicable law to prevent such prescriptive rights, and (ii) the Developer uses its reasonable efforts to minimize any adverse impact on the operation of any business on any Parcel.

8. Construction of Improvements on Outparcel I. Tiengkongkarn agrees to commence construction of the Thai restaurant no later than six (6) months from the date of this Declaration and complete the construction and open the Thai restaurant for business no later than two (2) years from the date of this Declaration. All staging for construction materials must be kept



on Outparcel I only. In the event additional construction is required in the future on Outparcel I, such construction must be completed no later than one year from commencement and all the provisions of this paragraph 8 shall apply to such construction.

The Owner of Outparcel I shall repair, restore, or replace, as Developer shall direct, any property, whether personal or real, by whomever owned, which is damaged, destroyed, or injured in any way by the Owner of Outparcel I, its agents, representatives, designees, employees, or successors or assigns, in connection with the construction of the Thai restaurant or the site development on Outparcel I, including, without limitation, any right-of-way curbs, median curbs, signs, or pavement in the rights-of-way of dedicated or undedicated roads within; and except for that which arises out of Developer's gross negligence or intentional misconduct, Owner of Outparcel I hereby agrees to indemnify and hold Developer harmless from any and all liabilities, claims, and losses resulting from or arising in connection with any such damage, destruction, or injury.

During construction, the Owner of Outparcel I shall adopt dust abatement and erosion control measures in all stages of construction. All building debris must be removed from Outparcel I by the Owner of Outparcel I as often as necessary to keep Outparcel I attractive. Such debris shall not be dumped in any area of the Shopping Center or surrounding road right of ways. During construction, all vehicles, including those delivering supplies, must be parked on Outparcel I so as to not unnecessarily damage or block the Shopping Center or Private Road.

9. Successors/Duration. These Restrictions and Easements shall run with, burden, and affect, touch and concern each Parcel. The rights, obligations and easements provided for herein shall inure to the benefit of each Owner and all future owners of the Parcels and shall be binding upon each owner and the successors, assigns, heirs and representatives of each of the same.

10. Waivers. No delay or omission in exercising any right accruing under the provisions of this Declaration shall impair any such right or be construed to be a waiver thereof nor shall any waiver of any of the Easements and Restrictions (which shall not be effective unless in a writing executed by the Owner(s) affected thereby addressing such a waiver) be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

11. Modifications. This Declaration may be modified or amended by the Owners of the Parcels which modification or amendment shall become effective upon (i) the written consent of any holder of a first mortgage on any Parcel, (ii) the written consent of the Owners of the Parcels, which consents required by subsections (i) and (ii) shall not be unreasonably withheld or delayed, and (iii) filing same in the real property records of Shelby County, Alabama.

12. Pronouns. When required by context, the singular shall include the plural, and the neuter gender shall include a person, corporation, limited liability company, firm, association, or other business arrangement.



13. Captions. The captions in this Declaration are for conveniences only and do not constitute a part of the provisions hereof.

14. Governing Law. This Declaration shall be construed and enforced in accordance with, and governed by, the laws of the State of Alabama.

15. No Presumption. This Declaration shall be interpreted and construed only by the contents hereof and there shall be no presumption or standard of construction in favor of or against any Owner.

16. Costs. If any action or any proceeding among the Owners arises out of this Declaration, or if any Owner is made a party to any action or proceeding brought by a third party arising out of this Declaration, then the prevailing party shall be entitled to recover, as an element of its costs of suit and not as damages, reasonable attorneys' fees to be fixed by the court.

17. No Benefit. This instrument is not included to and does not dedicate any portions of the Parcels to the general public or create any rights for the general public.

18. Partial Invalidity. If any term, provision or condition contained in this Declaration or the application of it to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Declaration (or the application of such term, provision or condition to persons or circumstances other than those in respect of which it is invalid or unenforceable) shall not be affected thereby, and each and every other term, provision and condition of this Declaration shall be valid and enforceable to the fullest extent permitted by law.

19. Enforcement. In the event of a violation or breach of any of these restrictions, or any amendments thereto by any Owner, or agent of such Owner, Developer, or should Developer elect not to seek enforcement, any other nondefaulting Owner 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 or other charges, or take all such courses of action at the same time, or such other legal remedy it may deem appropriate. No delay or failure on the part of any aggrieved party to invoke an available remedy set forth herein shall be held to be a waiver of that party or an estoppel of that party or of any other party to assert any right available to him upon the recurrence or continuation of said violation or the occurrence of a difference violation. Developer shall not be responsible in any way for any delay or failure to enforce or seek to enforce any violation or breach of any of these restrictions or amendments thereto.

20. Amendment of Existing Easements. The Developer heretofore executed and recorded two easements in connection with the Shopping Center, namely, that certain Declaration of Access Easement, dated as of September 9, 2002, and recorded with the Judge of Probate of Shelby County at #20020911000436080 (the "Access Easement") and that certain Declaration of Drainage Easement, dated as of September 9, 2002, and recorded with the Judge of Probate of Shelby County at #20020911000436070 (the "Drainage Easement" and the Access Easement and

Drainage Easement collectively, the "Easements"). Under paragraph 7 of each of the Easements, Developer reserved the right to supplement the Easements. The terms of and the easements granted under this Declaration hereby supercede the Easements in their entirety. The Easements have no further force and effect and are hereby terminated and replaced by this Declaration.



IN WITNESS WHEREOF, the undersigned have hereunto affixed their hands and seals this the 21 day of August 2003.

DEVELOPER:

The Crossroads at Greystone, LLC, an Alabama limited liability company

By: Dantract, Inc.  
Its manager

By: Charles W. Daniel  
Name: Charles W. Daniel  
Its: President

STATE OF ALABAMA     )  
                                     :  
COUNTY OF JEFFERSON )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Charles W. Daniel, whose name as President of Dantract, Inc., an Alabama corporation, as Manager of The Crossroads at Greystone, 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 of said corporation, acting in its capacity as manager for said limited liability company, and with full authority, executed the same voluntarily for and as the act of said limited liability company, as of the day the same bears date.

Given under my hand and official seal this 21 day of August, 2003.

Benita

Notary Public

SEAL

My commission expires:

8/27/05

XPRESS:

Xpress Partners, LLC, an Alabama limited liability company

By: *John E. Newman* [SEAL]  
Name: John E. Newman  
Its: Manager

STATE OF ALABAMA )

COUNTY OF Jefferson )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that John E. Newman whose name as the Manager of Xpress Partners, 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 Manager and with full authority, executed the same voluntarily for and as the act of said limited liability company, as of the day the same bears date.

Given under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2003.

*R. Gail Davis*

SEAL

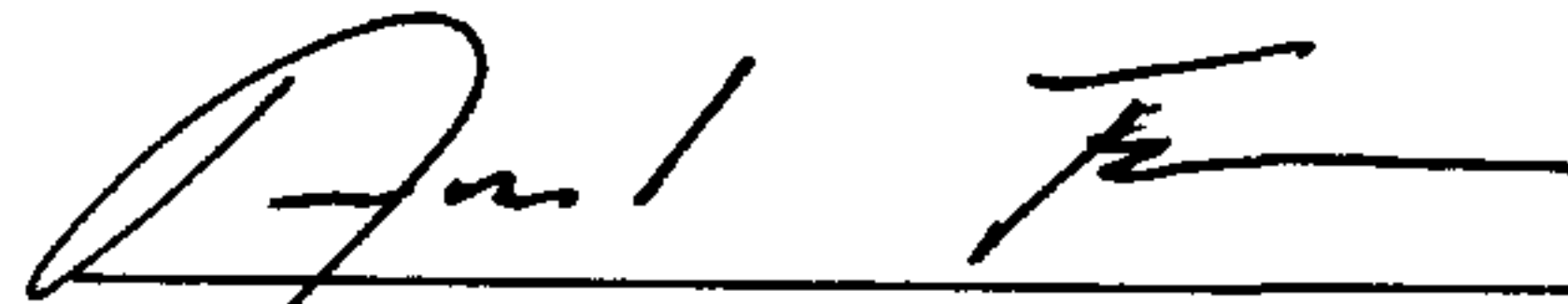
Notary Public

My commission expires:

1-27-06



TIEMKONGKARN:



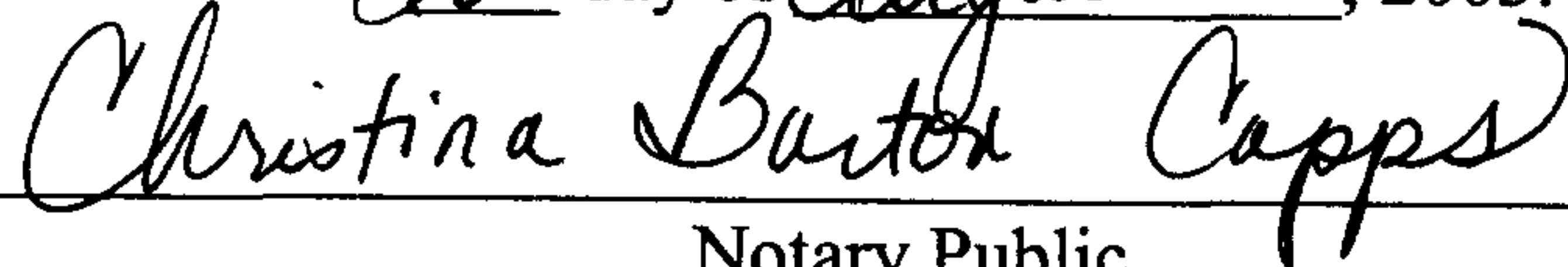
Anucha Tiemkongkanchna

STATE OF ALABAMA )

COUNTY OF Jefferson )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Anucha Tiemkongkanchna, 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/she executed the same voluntarily as of the day the same bears date.

Given under my hand and official seal this 26<sup>th</sup> day of August, 2003.




Notary Public

SEAL

My commission expires:

7-29-06

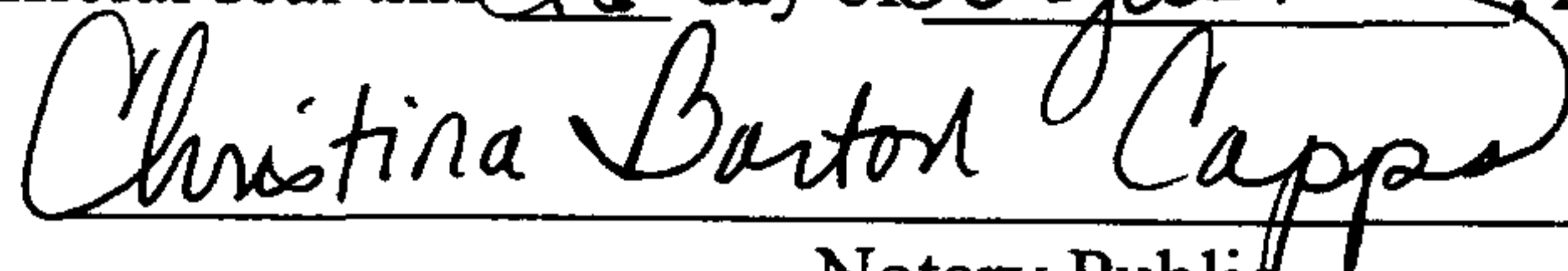
  
\_\_\_\_\_  
Maneesri Tiemkongkarn

STATE OF ALABAMA )

COUNTY OF Jefferson )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Maneesri Tiemkongkarn, 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/she executed the same voluntarily as of the day the same bears date.

Given under my hand and official seal this 26<sup>th</sup> day of August 2003.

  
\_\_\_\_\_  
Notary Public

SEAL

My commission expires: 7-29-06



Atinon Tiemkongkarn  
Atinon Tiemkongkarn

STATE OF ALABAMA )

COUNTY OF Jefferson )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that ~~Antinin~~ Atinon Tiemkongkarn, 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/she executed the same voluntarily as of the day the same bears date.

Given under my hand and official seal this 26<sup>th</sup> day of August, 2003.

Christina Barton Cupps  
Notary Public

SEAL

My commission expires:

7-29-05

## **CONSENT OF MORTGAGEE- DEVELOPER TRACT**

GENERAL ELECTRIC CAPITAL ASSURANCE COMPANY, a Delaware corporation (“Mortgagee”) is the holder of that certain Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Financing Statement dated as of September 9, 2002 (the “Mortgage”) recorded on September 11, 2002, in as Instrument No. 20020911000436090 in the Office of the Judge of Probate of Shelby County, Alabama. The Mortgage encumbers the property owned by Developer, as defined in this Declaration.

Mortgagee does hereby consent to the execution of this Declaration.

Mortgagee does hereby agree that the Mortgage and Mortgagee’s rights and interests thereunder are subordinated to the rights and interests of those Owners (other than Developer) under the Declaration and upon and after a foreclosure of the Mortgage, the granting of any deed in lieu of foreclosure or the taking of any other action by Mortgagee under the Mortgage which results in Mortgagee acquiring title to or any interest in the Developer Tract (collectively, a “Foreclosure Action”), then (a) the Declaration and all of the rights and privileges under the Declaration shall not be affected or disturbed by virtue of such Foreclosure Action, but shall continue in full force and effect, (b) each and every party to the Declaration and their respective successors and assigns shall continue to have the right to enjoy all of the rights and privileges set forth in the Declaration without any interference by any person claiming by, through or under Mortgagee, (c) Mortgagee or any purchaser at foreclosure, as applicable, shall succeed to the interests of Developer under the Declaration and Mortgagee shall be bound by all of the terms and provisions of the Declaration; provided, however, that in no event shall Mortgagee (or any purchaser at foreclosure) be bound by any amendments or modifications to the Declaration not consented to in writing by Mortgagee and (d) Mortgagee (or any purchaser at foreclosure) shall execute any documents or instruments reasonably requested by any of the parties to the Declaration and their respective successors and assigns to confirm that all of the terms and provisions of the Declaration shall continue in full force and effect following any such Foreclosure Action.



IN WITNESS WHEREOF, Mortgagee has executed this Consent of Mortgagee as of the 18<sup>th</sup>  
day of August, 2003.

**LENDER**

GENERAL ELECTRIC CAPITAL ASSURANCE  
COMPANY, a Delaware corporation

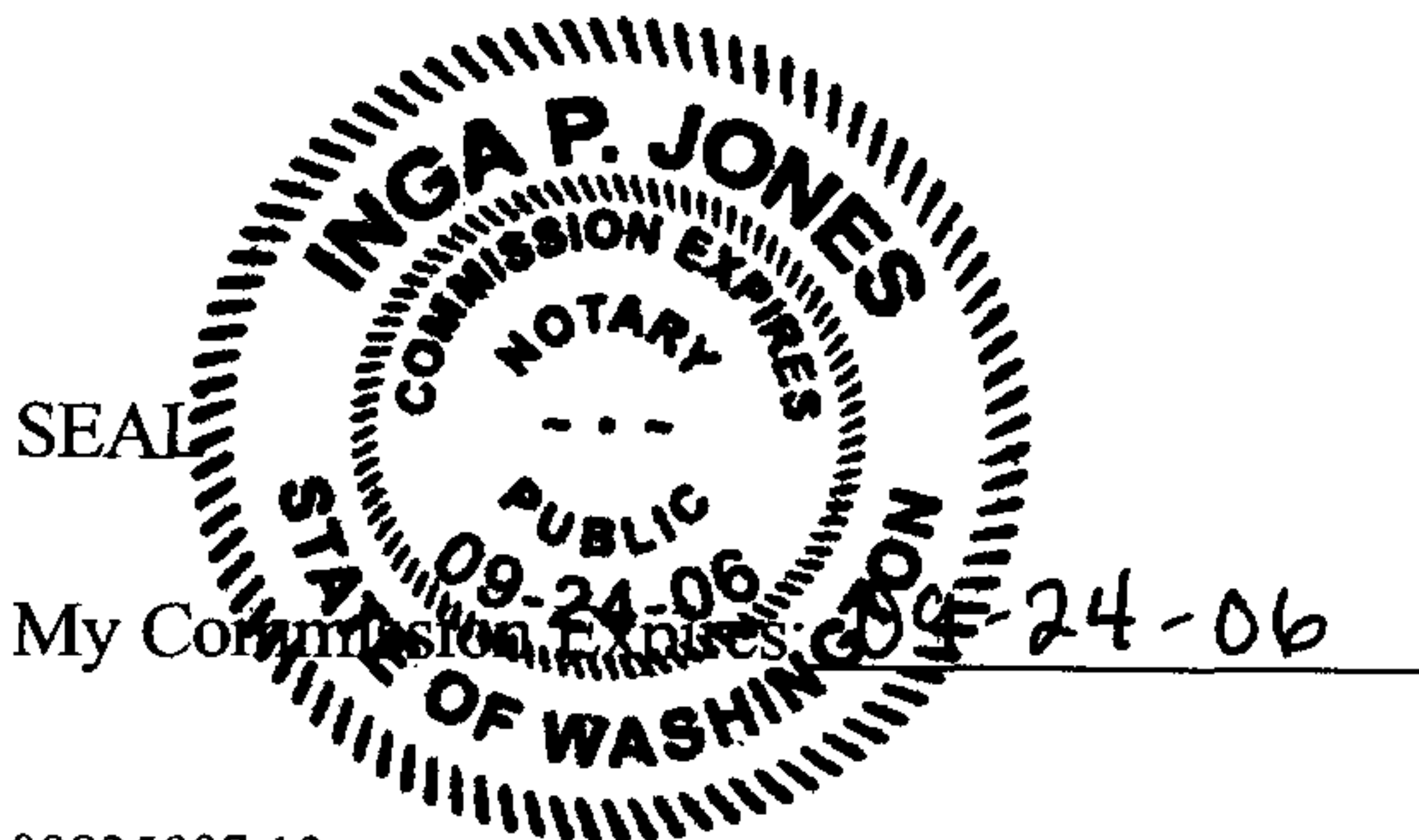
By: GE ASSET MANAGEMENT  
INCORPORATED, its investment advisor

By: Cindy J. Heidel  
Its: Vice President - Fixed Income

STATE OF Washington )  
COUNTY OF King )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Cindy J. Heidel, whose name as VP- Fixed Income of GE ASSET MANAGEMENT INCORPORATED, investment advisor to GENERAL ELECTRIC CAPITAL ASSURANCE COMPANY, a Delaware 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, as such officer and with full authority, executed the same voluntarily, for and as the act of said corporation, in its capacity aforesaid.

Given under my hand and official seal this the 18<sup>th</sup> day of August, 2003.



Inga P. Jones  
NOTARY PUBLIC

### **CONSENT OF MORTGAGEE**

National Bank of Commerce of Birmingham ("Mortgagee") is the holder of that certain Mortgage dated as of April 22, 2003 (the "Mortgage") recorded in Instrument number 20030428000257030 in the Office of the Judge of Probate of Shelby County, Alabama. The Mortgage encumbers the property owned by XPRESS, as defined in this Declaration.

Mortgagee does hereby consent to the execution of this Declaration.

Mortgagee does hereby agree that the Mortgage and Mortgagee's rights and interests thereunder are subordinated to the rights and interests of those Owners (other than XPRESS) under the Declaration and upon and after a foreclosure of the Mortgage, the granting of any deed in lieu of foreclosure or the taking of any other action by Mortgagee under the Mortgage which results in Mortgagee acquiring title to or any interest in Outparcel II (collectively, a "Foreclosure Action"), then (a) the Declaration and all of the rights and privileges under the Declaration shall not be affected or disturbed by virtue of such Foreclosure Action, but shall continue in full force and effect, (b) each and every party to the Declaration and their respective successors and assigns shall continue to have the right to enjoy all of the rights and privileges set forth in the Declaration without any interference by any person claiming by, through or under Mortgagee, (c) Mortgagee or any purchaser at foreclosure, as applicable, shall succeed to the interests of XPRESS under the Declaration and Mortgagee shall be bound by all of the terms and provisions of the Declaration; provided, however, that in no event shall Mortgagee (or any purchaser at foreclosure) be bound by any amendments or modifications to the Declaration not consented to in writing by Mortgagee and (d) Mortgagee (or any purchaser at foreclosure) shall execute any documents or instruments reasonably requested by any of the parties to the Declaration and their respective successors and assigns to confirm that all of the terms and provisions of the Declaration shall continue in full force and effect following any such Foreclosure Action.

IN WITNESS WHEREOF, Mortgagee has executed this Consent of Mortgagee as of the  
\_\_\_\_\_ day of \_\_\_\_\_, 2003.

**LENDER**

**NATIONAL BANK OF COMMERCE OF  
BIRMINGHAM**

By: Stephen F. Vick  
Its: S.V.P.

STATE OF ALABAMA     )  
                                      :  
COUNTY OF JEFFERSON )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that  
Stephen F. Vick, whose name as S.V.P. of **NATIONAL BANK OF  
COMMERCE OF BIRMINGHAM**, 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 bank.

Given under my hand and official seal this the 21<sup>st</sup> day of August, 2003.

Glenn B. Vick  
NOTARY PUBLIC

SEAL

My Commission Expires: **NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
MY COMMISSION EXPIRES: Aug 1, 2007  
BONDED THRU NOTARY PUBLIC UNDERWRITERS**



## CONSENT OF MORTGAGEE

COMPASS BANK ("Mortgagee") is the holder of that certain Future Advance Mortgage, Assignment of Rents and Leases and Security Agreement dated as of August 26, 2003 (the "Mortgage") recorded as Instrument No. \*\_\_\_\_\_ in the Office of the Judge of Probate of Shelby County, Alabama. The Mortgage encumbers the property owned by Tiemkongkarn, as defined in this Declaration. \* 20030827000569320

Mortgagee does hereby consent to the execution of this Declaration.

Mortgagee does hereby agree that the Mortgage and Mortgagee's rights and interests thereunder are subordinated to the rights and interests of those Owners (other than Tiemkongkarn) under the Declaration and upon and after a foreclosure of the Mortgage, the granting of any deed in lieu of foreclosure or the taking of any other action by Mortgagee under the Mortgage which results in Mortgagee acquiring title to or any interest in Outparcel I (collectively, a "Foreclosure Action"), then (a) the Declaration and all of the rights and privileges under the Declaration shall not be affected or disturbed by virtue of such Foreclosure Action, but shall continue in full force and effect, (b) each and every party to the Declaration and their respective successors and assigns shall continue to have the right to enjoy all of the rights and privileges set forth in the Declaration without any interference by any person claiming by, through or under Mortgagee, (c) Mortgagee or any purchaser at foreclosure, as applicable, shall succeed to the interests of Tiemkongkarn under the Declaration and Mortgagee shall be bound by all of the terms and provisions of the Declaration; provided, however, that in no event shall Mortgagee (or any purchaser at foreclosure) be bound by any amendments or modifications to the Declaration not consented to in writing by Mortgagee and (d) Mortgagee (or any purchaser at foreclosure) shall execute any documents or instruments reasonably requested by any of the parties to the Declaration and their respective successors and assigns to confirm that all of the terms and provisions of the Declaration shall continue in full force and effect following any such Foreclosure Action.

IN WITNESS WHEREOF, Mortgagee has executed this Consent of Mortgagee as of the 26<sup>th</sup> day of AUGUST, 2003.

**COMPASS BANK**

By: Gary Bishop  
Its: Sr. Vice Pres.

STATE OF Alabama )  
COUNTY OF Jefferson )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Gary Bishop, whose name as Sr. Vice Pres. of COMPASS BANK, 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 corporation.

Given under my hand and official seal this the 26<sup>th</sup> day of August, 2003.

Shelia M. Mashe  
NOTARY PUBLIC

SEAL

My Commission Expires: 10-17-06

## **EXHIBIT A**

### **Legal Description - Developer Tract**

Lot 1A, according to the Resurvey of Lots 1 and 2 of the Crossroads of Greystone, said Resurvey being recorded in Map Book 29, page 53, of the Judge of Probate of Shelby County, Alabama



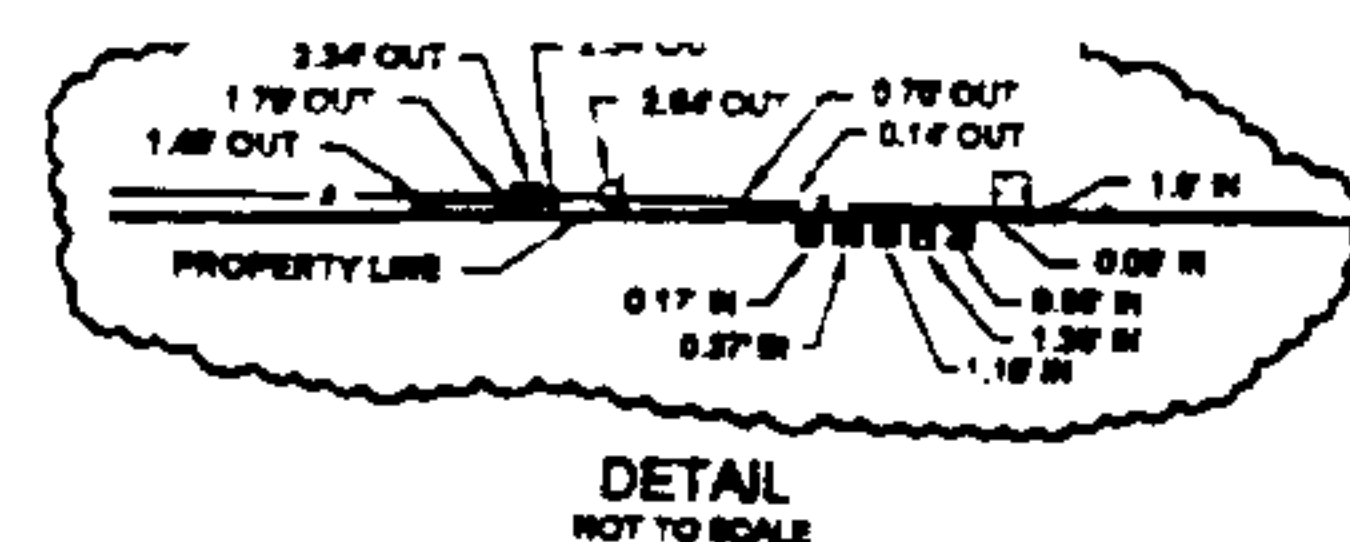
## **EXHIBIT B**

Site Plan - see attached

**VICINITY MAP**  
**NOT TO SCALE**

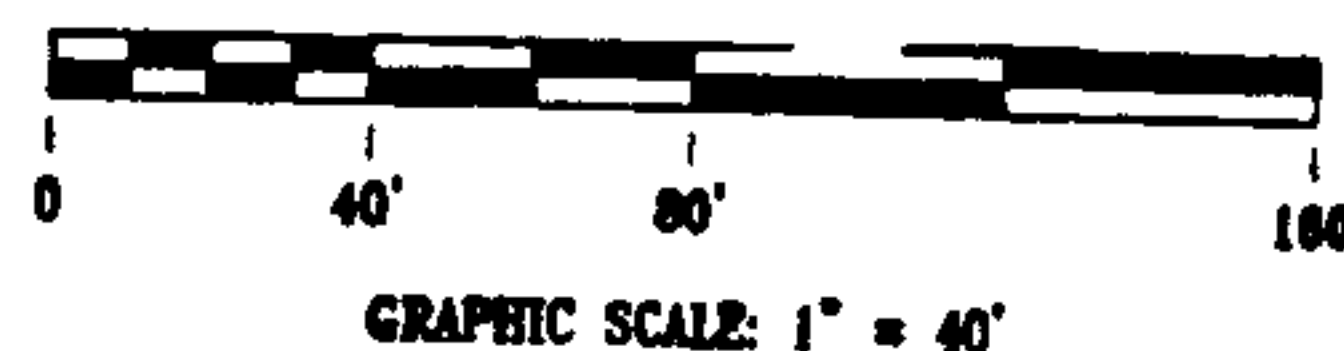


## LEY ROAD



**DETAIL  
NOT TO SCALE**

SCALE: 1" = 40'



**GRAPHIC SCALE: 1" = 40'**

**COMMITMENT FOR TITLE INSURANCE  
SCHEDULE B-PART II  
EXCEPTIONS**

Surveyor's comments on exceptions listed in Schedule S, Part II for  
(File No. 130004 effective date July 17, 2002) by First American Title

10. Terms and provisions of the Graystone Commercial Declaration Restrictions as recorded in Real Volume 314 page 808, amended by Inst. No. 1990-00531, amended by the 2nd Amendment in Inst. No. 1. Amendment recorded Inst. No. 2000-39842 all recorded in the Probate Alabama. (Book 314, page 809, 5.84(a) 80' setback line, 5.85 Ravel & D. Does not affect this property)

11. Transmission Line Permit(s) to Alabama Power Company as shown in Deed Book 109 page 491 in Probate Office, as effected by the Clerk of Court, Sani P. Parks, Alabama Power Company, dated July 2, at 2002.

12. Terms and Provisions of the Reciprocal Easement Agreement by System, Inc. and Charles W. Daniel date January 1, 1968 as set out by Inst. No. 2001-7233 in the Probate Office. (Shown as plot)

13. Easement to Shelby County, Alabama from Baptist Health System in Probate Office. However, there is excluded from this exception any that thirty-foot wide easement described in Parcel A of Exhibit A of the October 1986 from Baptist Health System, Inc. to Shelby County, Alabama 1996 43304 in the Probate Office of Shelby County, Alabama, which is subsequently abolished by Inst. S 1996-07730 in the Probate Office.

14. Reciprocal Estimation Agreement dated August 5, 1999 by and between and Sports First, Inc. as set out in Inst. #1999-3364 and amended in Office. (Shown on plot)

15. Permanent Easement Deed from the Crossroads at Greystone, LL  
29, 2002, recorded July 30, 2002 as set out in Inst. #20620730000008  
Shown on plat)

16. Non-beneficial terms and provisions contained in the Declaration of September \_\_\_\_, 2002 by The Crossroads at Graystone, LLC as recorded in the Probate Office of Shelby County, Alabama.

17. Non-beneficial terms and provisions contained in the Declaration of September \_\_\_, 2002 by The Crossroads at Greystone, LLC as record in the Probate Office of Shelby County, Alabama.

18. Rights of tenants under the leases of the land described in Exhibit Schedule A, herein.

19. The following matters as shown on record plot in Map Book 28 cover:

**Let 1A:**

- 9) 90 foot front setback line from Albemarle Highway 118 (a.k.a. Cabotville Road)
- 10) 30 foot rear setback line on the Eastern side (Shown on plat)
- 11) 15 foot side setback lines on the Southern side (Shown on plat)
- 12) Side building setback line on Northern side as shown on Map Book 28
- 13) 100 foot side setback line on the Northwestern side (Shown on plat)
- 14) Ingress and egress easement on Northern side as shown on Map Book 28
- 15) 5 foot utility easement on the Southern and Eastern side (Shown on plat)
- 16) 25 foot and irregular access easement of the Eastern side (Shown on plat)
- 17) 5 foot landscape buffer and utility easement on Eastern side (Shown on plat)

No parking spaces shall be allowed on the access road in the ingress and egress easement.

All easements on the map are for public utilities, sanitary sewers, storm sewers, storm drains, and may be used for such purposes to serve the property both within and without the subdivision.

As to Item T under Lot 1A, above, the Company affirmatively insures the damage from loss of the right to continued use of said parking spaces.

**NOTE:** Item 8, Schedule B, Part II, above, is hereby deleted; Items 1, 2, 3, upon receipt and review of Seller's Owner's Affidavit and Indemnity Form, subject to what came with the car.

STATE OF ALABAMA  
SHELBY COUNTY

The undersigned hereby certifies to GE FINANCIAL ASSURANCE HOLDINGS subsidiaries, First American Title Insurance Company and The Grantee(s) of August 5, 2002, that this survey was actually made upon the ground, that it conforms and distances shown thereon are accurate; that the title lines and lines of corners, that the Property description "close" by metes-and-bounds notation, that shows the size, location and type of all buildings, structures and other improvements and all are within the boundary lines and accessible on-look lines (whether or not easements, rights of way or areas affecting the Property herein) to the underwriter's careful physical inspection of the same after than those shown hereon, that therefore, there are no party walls with or encroachments upon adjoining parcels of said building, structures or other improvements; or encroachments upon the Property for any building, structure or other improvement situated upon any public streets necessary for access to the Property have been completed and directed access between such streets and the Property; that the Property surveyed that the Property lies within a minimal flood hazard area and is within an area designated as C-1 shown on the Federal Insurance Administration Flood Hazard Boundary Map 9107191 0020 B, Shelby County, Alabama, dated 9-16-82; and that the street at Corner 5408 U.S. Highway 280 (SR71 Calaca Valley Road), This survey was conducted with the Minimum Standard Detail Requirements and Classifications for Land Titles established by ALTA and ACSM in 1987 and meets the accuracy requirements defined therein.

**SURVEYING SOLUTIONS, INC.**  
2233 CANABA VALLEY DRIVE  
BIRMINGHAM, AL 35242  
PHONE: 205.988.1115

Carl Daniel Moore, Reg. L.S. #  
04-04-03

STATE OF ALABAMA  
SHELBY COUNTY

I, Carl Daniel Moore, a registered Land Surveyor, certify that I have surveyed Lot 1, Lots 1 AND 2 THE CROSSROADS OF GREYSTONE as recorded in Map Book \_\_\_\_\_ Office of the Judge of Probate, Shelby County, Alabama; that all parts of this survey have been completed in accordance with the current requirements of the Standards of Practice in the State of Alabama to the best of my knowledge, information and belief; that I am a member of the Federal Insurance Administration "Flood Hazard Boundary Map" and found that it places the subject property in Flood Zone C according to F.I.A.M. community panel number 010181 0020 0-9, Alabama, dated: 8-10-82 that the current address is as follows: Current #406 U.S. Highway 90 (Carver Valley Road) according to my survey of August 6, 2002. My survey is not yet sealed with embossed seal or stamped in red.

**SURVEYING SOLUTIONS, INC.**  
2233 CANABA VALLEY DRIVE  
BIRMINGHAM, AL 35242  
PHONE: 801-8805

Carl Daniel Moore  
Carl Daniel Moore, Reg. L.S. #  
04-09-03  
Date of Birth:





## **EXHIBIT C**

### **Legal Description - Outparcel I**

**Lot 2A, according to the Resurvey of Lots 1 and 2 of the Crossroads of Greystone, said Resurvey being recorded in Map Book 29, page 53, of the Judge of Probate of Shelby County, Alabama**

## **EXHIBIT D**

### **Legal Description - Outparcel II**

Lot 3, according to a survey recorded in Map Book 28, page 29, in the Probate Office of Shelby County, Alabama.



## **EXHIBIT E**

### **Legal Description - Detention Area**

A PARCEL OF LAND SITUATED IN THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 32, TOWNSHIP 18 SOUTH, RANGE 1 WEST, CITY OF HOOVER, SHELBY COUNTY, ALABAMA; COMMENCE AT THE SOUTHEAST CORNER OF LOT 2, THE CROSSROADS OF GREYSTONE, AS RECORDED IN MAP BOOK 2001, AT PAGE 13703, OF THE PUBLIC RECORD OF SAID COUNTY; THENCE RUN WESTERLY ALONG THE SOUTH LINE OF SAID LOT 2, FOR A DISTANCE OF 30.89 FEET; THENCE DEFLECTING RIGHT 94 DEGREES 45 MINUTES 33 SECONDS AND RUN NORTHERLY FOR A DISTANCE OF 139.36 FEET TO A POINT ON THE ARC OF A CURVE HAVING A RADIUS OF 2666.81 FEET, (DELTA ANGLE = 5 DEGREES 50 MINUTES 12 SECONDS, ARC LENGTH = 271.67 FEET) AND THE POINT OF BEGINNING, THENCE DEFLECTING LEFT ALONG THE CHORD OF SAID CURVE 95 DEGREES 39 MINUTES 03 SECONDS AND RUN WESTERLY FOR A DISTANCE OF 271.55 FEET; THENCE DEFLECTING RIGHT 95 DEGREES 22 MINUTES 31 SECONDS AND RUN NORTHERLY FOR A DISTANCE OF 48.48 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF U.S. HIGHWAY 280, (230' RIGHT OF WAY) TO A POINT ON A CURVE HAVING A RADIUS OF 2714.79 FEET, (DELTA ANGLE = 6 DEGREES 22 MINUTES 24 SECONDS, ARC LENGTH = 301.98 FEET); THENCE DEFLECTING RIGHT 84 DEGREES 43 MINUTES 13 SECONDS ALONG THE CHORD OF SAID ARC AND RUN EASTERLY FOR A DISTANCE OF 301.83 FEET; THENCE DEFLECTING RIGHT 95 DEGREES 16 MINUTES 47 SECONDS AND RUN SOUTHERLY FOR A DISTANCE OF 48.02 FEET TO THE POINT OF BEGINNING. THE ABOVE DESCRIBED PROPERTY CONTAINS 0.30 ACRES MORE OR LESS.

## **EXHIBIT F**

### **Legal Description - Outparcel I Sewer Line Easement**

A PARCEL OF LAND SITUATED IN THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 32, TOWNSHIP 18 SOUTH, RANGE 1 WEST, CITY OF HOOVER, SHELBY COUNTY, ALABAMA, COMMENCE AT THE SOUTHWEST CORNER OF LOT 2, THE CROSSROADS AT GREYSTONE, AS RECORDED IN PLAT BOOK 1301, PAGE 13703, OF THE PUBLIC RECORDS OF SAID COUNTY, THENCE NORTHERLY ALONG THE WEST LINE OF SAID LOT 2, A DISTANCE OF 2.38 FEET TO THE POINT OF BEGINNING OF A 15 FOOT EASEMENT LYING 7.5 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE; THENCE DEFLECTING LEFT 93 DEGREES 57 MINUTES 19 SECONDS AND RUN WESTERLY FOR A DISTANCE OF 67.73 FEET TO THE POINT OF TERMINUS OF THIS DESCRIPTION, WITH THE SHORTENING AND THE LENGTHENING WHEREAS TO INTERSECT RIGHT OF WAY LINES AND ADJACENT LOT LINES.