

THIS INSTRUMENT PREPARED BY:

Terry W. Gloor, Esquire
800 Shades Creek Parkway
Suite 335
Birmingham, AL 35209
205-870-4104
STATE OF ALABAMA
COUNTY OF SHELBY

SECOND MORTGAGE
(ALABAMA)

THIS INDENTURE made this 3RD day of June 2004, between **THE VILLAGE AT HIGHLAND LAKES, LTD., an Alabama limited partnership** (hereinafter called the "Borrower" or the "Mortgagor"), as mortgagor, and **MARATHON CORPORATION** (hereinafter the said mortgagee(s) and any subsequent holder of the Mortgage are referred to as the "Lender", "Mortgagee" or "Marathon"), as mortgagee.

WITNESSETH:

WHEREAS, Mortgagor is justly indebted to Lender in the principal sum of **Eight Million Nine Hundred Nine Thousand Five Hundred Ten & no/100 Dollars (\$8,909,510.00)** (the "Loan"), as evidenced by promissory note of even date herewith, payable to Lender with interest thereon (collectively the "Note") in one Balloon Payment as provided in the Note; and

WHEREAS, *this Mortgage is secondary and subordinate to that certain Mortgage from The Village At Highland Lakes, Ltd. to Compass Bank dated the 4th day of June, 2004, and recorded at Instrument Number: 2004 / 298340 of the Office of the Judge of Probate of Shelby County, Alabama; and*

WHEREAS, the parties desire to secure the principal amount of the Note with interest, and all renewals, extensions and modifications thereof.

NOW, THEREFORE, the Mortgagor, in consideration of making the Loan above-mentioned, and to secure the prompt payment of same, with the interest thereon, and any extensions, renewals, modifications of same, and any charges herein incurred by Lender on account of Borrower, including but not limited to attorneys' fees, and any and all other indebtedness of Borrower to Lender as set forth herein, and further to secure the performance of the covenants, conditions and agreements hereinafter set forth and set forth in the Note has bargained and sold and does hereby grant, bargain, sell, alien and convey unto the Lender, its successors and assigns, the following described land, real estate, and improvements (which together with any additional such property in the possession of the Lender or hereafter acquired by the Borrower and subject to the lien of this Mortgage, or intended to be so, as the same may be constituted from time to time is hereinafter sometimes referred to as the "Mortgaged Property") to wit:

(a) All that tract or parcel or parcels of land in Shelby County, Alabama, particularly described in **Exhibit A**, with the exceptions stated in **Exhibit B**, both attached hereto and made a part hereof;

(b) Together with all easements, rights of way, streets, ways, passages, sewer rights, waters, water courses, water rights and powers, and all estates, leases, rights, titles, interests, privileges, liberties, tenements, hereditaments, and appurtenances whatsoever, in any way belonging, relating or appertaining to any of the property hereinabove described, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by the Borrower.

TO HAVE AND TO HOLD the Mortgaged Property and all parts thereof unto the Lender, its successors and assigns forever, subject however to the terms and conditions herein;

PROVIDED, HOWEVER, that these presents are upon the condition that, if the Borrower shall pay or cause to be paid to the Lender the principal and interest payable in respect to the Note, and any extensions, renewals, modifications and refinancings of same, at the times and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid by the Borrower, and shall pay all charges incurred herein by Lender on account of Borrower, including, but not limited to, attorney's fees, and shall pay any and all other indebtedness of Borrower to Lender, and shall keep, perform and observe all and singular the covenants, conditions and agreements in this Mortgage and in the Note, without fraud or delay, then this Mortgage, and all the properties, interest and rights hereby granted, bargained, sold and conveyed shall cease, determine and be void, but shall otherwise remain in full force and effect.

AND the Borrower further represents, warrants, covenants and agrees with the Lender as follows:

ARTICLE I

1.01 Performance of Mortgage, Note and Loan Documents. The Borrower will perform, observe and comply with all provisions hereof, and of the Note, and will duly and punctually pay to the Lender the sum of money expressed in the Note, with interest thereon, and all other sums required to be paid by the Borrower pursuant to the provisions of this Mortgage, all without any deductions or credit for taxes or other similar charges paid by the Borrower.

1.02 Warranty of Title. Borrower hereby warrants that, subject to any exceptions shown on **Exhibit B**, it is lawfully seized of an indefeasible estate in fee simple in the land and real property hereby mortgaged, has full power and lawful authority to sell, convey and mortgage the same in the manner and form aforesaid; that the same is free and clear of all liens, charges, and encumbrances whatsoever (*excepting the existing first mortgage to Compass Bank*), and that Borrower shall and will warrant and forever defend the title thereto and the quiet use and enjoyment thereof unto the Lender, its successors and assigns, against the lawful claims of all persons whomsoever.

1.03 Environmental Matters. Borrower represents, warrants, and covenants as follows:

(a) No Hazardous Materials (hereinafter defined) will be, while any part of the indebtedness secured by this Mortgage remains unpaid, contained in, treated, stored, handled, generated, located on, discharged from, or disposed of on, or constitute a part of, the Mortgaged Property. As used herein, the term "Hazardous Materials" includes without limitation, any asbestos, urea formaldehyde foam insulation, flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related or unrelated substances or material defined, regulated, controlled, limited or prohibited in the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA), as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, et seq.), the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. Sections 6901, et seq.), the Clean Water Act, as amended (33 U.S.C. Sections 1251, et seq.), the Clean Air Act, as amended (42 U.S.C. Sections 7401, et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. Sections 2601, et seq.), and in the rules and regulations adopted and publications promulgated pursuant thereto.

(b) All of the Mortgaged Property complies and will comply in all respects with applicable environmental laws, rules, regulations, and court or administrative orders;

(c) There are no pending claims or threats of claims by private or governmental or administrative authorities relating to environmental impairment, conditions, or regulatory requirements with respect to the Mortgaged Property;

Borrower hereby agrees to indemnify and hold Lender harmless from all loss, cost, damage, claim and expense incurred by Lender on account of (i) the violation of any representation, warranty or covenant set forth in this Paragraph 1.03, or (ii) any other matter related to environmental or physical conditions on, under or affecting the Mortgaged Property. This indemnification shall survive the closing of the Loan, payment of the Loan, any subsequent sale or transfer of the Mortgaged Property, and all similar or related events.

1.04 Taxes, Utilities and Liens.

(a) The Borrower will pay promptly, when and as due, and, if requested, will exhibit promptly to the Lender receipts for the payment of all taxes, assessments, water rates, utility charges, dues, charges, fines, penalties, costs and other expenses incurred, and impositions of every nature whatsoever imposed, levied or assessed or to be imposed, levied or assessed upon or against the Mortgaged Property or any part thereof, or upon the interest of the Lender in the Mortgaged Property or any charge which, if unpaid, would become a lien or charge upon the Mortgaged Property prior to or equal to the lien of this Mortgage for any amounts secured hereby or would have priority or equality with this Mortgage for any amounts secured hereby or would have priority or equality with this Mortgage in distribution of the proceeds of any foreclosure sale of the Mortgaged Property or any part thereof.

(b) The Borrower promptly shall pay and will not suffer any mechanic's, laborer's, statutory or other lien which might or could be prior to or equal to the lien of this Mortgage to be created or to remain outstanding upon any of the Mortgaged Property.

1.05 Insurance.

(a) The Borrower will procure for, deliver to, and maintain for the benefit of the Lender during the life of this Mortgage insurance policies in such amounts as the Lender shall require, insuring the Mortgaged Property against fire, extended coverage, war damage, terrorist acts, (if available), and such other insurable hazards, casualties and contingencies as the Lender may require. The form of such policies and the companies issuing them shall be acceptable to the Lender. All policies shall contain a New York standard, non-contributory mortgagee endorsement making losses payable to the Lender. At least thirty (30) days prior to the expiration date of all such policies, renewals thereof satisfactory to the Lender shall be delivered to the Lender. The Borrower shall deliver to the Lender receipts evidencing the payment of all such insurance policies and renewals. In the event of the foreclosure of this Mortgage or any transfer of title to the Mortgaged Property in partial or full extinguishment of the indebtedness secured hereby, all right, title and interest of the Borrower in and to all insurance policies then in force shall pass to the purchaser or grantee.

(b) The Lender is hereby authorized and empowered, at its option, to adjust or compromise any loss under any insurance policies on the Mortgaged Property, and to collect and receive the proceeds from any such policy or policies. Each insurance company is hereby authorized and directed to make payment for all such losses directly to the Lender instead of to the Borrower and Lender jointly. After deducting from said insurance proceeds any expenses incurred by Lender in the collection or handling of said fund, the Lender may apply the net proceeds, at its option, either toward restoring the improvements on the Mortgaged Property, or as a credit on any portion of the Borrower's indebtedness selected by Lender, whether then matured or to mature in the future, or at the option of the Lender, such sums either wholly or in part may be paid over to the Borrower to be used to repair such improvements, or to build new improvements in their place or for any other purpose satisfactory to the Lender, all without affecting the lien of this Mortgage for the full amount secured hereby before such payment took place. Lender shall not be held responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure.

1.06 Condemnation. If all or any part of the Mortgaged Property shall be damaged or taken through condemnation (which term when used in this Mortgage shall include any damage or taking by any governmental or private authority, and any transfer by private sale in lieu thereof), either temporarily or permanently, the entire indebtedness secured hereby shall at the option of the Lender become immediately due and payable. The Lender shall be entitled to all compensation, awards, and other payments or relief therefor and is hereby authorized, at its option, to commence, appear in and prosecute, in its own or the Borrower's name, any action or proceeding relating to any condemnation, and to settle or compromise any claim in connection therewith. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are

hereby assigned by the Borrower to the Lender, which after deducting therefrom all its expenses, including attorney's fees may release any moneys so received by it without affecting the lien of this Mortgage or may apply the same in such manner as the Lender shall determine to the reduction of the indebtedness secured hereby, and any balance of such moneys then remaining shall be paid to the Borrower. The Borrower agrees to execute such further assignments of any compensations, awards, damages, claims, rights of action and proceeds as the Lender may require.

1.07 Further Assurances; After Acquired Property. At any time, and from time to time upon request by the Lender, the Borrower will make, execute and deliver or cause to be made, executed and delivered to the Lender and, where appropriate, to cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or refiled at such time and in such offices and places as shall be deemed desirable by the Lender any and all such other and further mortgages, instruments of further assurance, certificates and other documents as may, in the opinion of the Lender, be necessary or desirable in order to effectuate, complete, or perfect, or to continue and preserve the obligation of the Borrower under the Note and this Mortgage, and the priority of this Mortgage as a second lien upon all of the Mortgaged Property, whether now owned or hereafter acquired by the Borrower. Upon any failure by the Borrower so to do, the Lender may make, execute, and record any and all such mortgages, instruments, certificates, and documents for and in the name of the Borrower and the Borrower hereby irrevocably appoints the Lender the agent and attorney-in-fact of the Borrower so to do. The lien and rights hereunder automatically will attach, without further act, to all after-acquired property (except consumer goods, other than accessions, not acquired within ten (10) days after the Lender has given value under the Note) attached to and/or used in the operation of the Mortgaged Property or any part thereof.

1.08 Expenses. The Borrower will pay or reimburse the Lender for all reasonable attorney's fees, costs and expenses incurred by the Lender in connection with the collection of the indebtedness secured hereby or the enforcement of any rights or remedies provided for in this Mortgage or as may otherwise be provided by law, or incurred by Lender in any proceeding involving the estate of a decedent or an insolvent, or in any action, proceeding or dispute of any kind in which the Lender is made a party, or appears as party plaintiff or defendant, affecting this Mortgage, the Note, Borrower or the Mortgaged Property, including but not limited to the foreclosure of this Mortgage, any condemnation action involving the Mortgaged Property, or any action to protect the security hereof; and any such amounts paid by the Lender shall be added to the indebtedness secured hereby and shall be further secured by this Mortgage.

1.09 Performance by Lender of Defaults by Borrower. If the Borrower shall default in the payment of any tax, lien, assessment or charge levied or assessed against the Mortgaged Property; in the payment of any utility charge, whether public or private; in the payment of insurance premiums; in the procurement of insurance coverage and the delivery of the insurance policies required hereunder; or in the performance or observance of any other covenant, condition or term of this Mortgage, of the Note, of the other Loan Documents, or of the Other Indebtedness Instruments, then the Lender, at its option, may perform or observe the same; and all payments made for costs or expenses incurred by the Lender in connection therewith shall be secured hereby and

shall be without demand, immediately repaid by the Borrower to the Lender with interest thereon at the greater of the rate of ten percent (10%) per annum or the rate set forth in the Note. The Lender shall be the sole judge of the legality, validity and priority of any such tax, lien, assessment, charge, claims and premium, of the necessity for any such actions and of the amount necessary to be paid in satisfaction thereof.

1.10 Transfers of Interests in Mortgaged Property or Borrower. The Borrower shall not sell, assign, mortgage, encumber, or otherwise convey the Mortgaged Property, or any interest therein, without obtaining the express written consent of the Lender prior to such conveyance. If Borrower should sell, assign, mortgage, encumber or convey all, or any part of, the Mortgaged Property, or any interest therein, without such consent by Lender, then, in such event, the entire balance of the indebtedness secured by this Mortgage and all interest accrued thereon (or such parts as Lender may elect) shall without notice become due and payable forthwith at the option of the Lender.

Lender shall have such right and option to withhold its consent in its sole discretion, absolutely, irrespective of any facts or circumstances, including, but not limited to, the following: whether or not any such transfer would or might (i) diminish the value of any security for the Loan, (ii) increase the risk of default under this instrument or any of the other Loan Documents, (iii) increase the likelihood of Lender's having to resort to any security for the Loan after default, or (iv) add or remove the liability of any person or entity for payment or performance of the Loan or any covenant or obligation under this Mortgage. If Lender's consent to a proposed transfer is requested, Lender shall have the right (in addition to its absolute right to refuse to consent to any such transfer) to condition its consent upon satisfaction of any conditions or requirements as Lender may determine including, but not limited to, any one or more of the following requirements: (i) that the interest rate on the Note be increased to a rate acceptable to Lender; (ii) that a reasonable transfer fee, in an amount determined by Lender be paid; (iii) that a principal amount deemed appropriate by Lender be paid against the Note; or (iv) that Borrower and each proposed transferee execute such assumption agreement and other instruments as Lender shall require.

1.11 Partial Release. At any time and from time to time when the Mortgagor is not in default in any of its obligations hereunder, the Mortgaged Property shall be released from any further right, title, interest, claim or demand of the Mortgagee upon payment of the consideration of Twenty Three Thousand & no/100 Dollars (\$23,000.00) per acre to Mortgagee; provided, however, the consideration paid at any time prior to January 1, 2005, shall be in the form of a non-negotiable letter of credit from the Mortgagor to the Mortgagee for the stated amount, issued by Compass Bank or other bank or trust company having a combined capital and surplus equal to or greater than Compass Bank.

ARTICLE II

2.01 Event of Default. The term Event of Default, wherever used in this Mortgage, shall mean any one or more of the following events:

(a) Failure by the Borrower to pay as and when due and payable (i) the Balloon Payment of principal, interest, or other charge payable under the Note, this Mortgage; or

(b) Failure by the Borrower to duly observe any other covenant, condition or agreement of this Mortgage, of the Note; or

(c) Failure by any guarantor to duly observe any covenant, condition or agreement of any guaranty agreement or other instrument covering or in any way relating to the Note or the Loan; or

(d) The filing by the Borrower or any guarantor of any indebtedness secured hereby of a voluntary petition in bankruptcy or the Borrower's or any guarantor's adjudication as a bankrupt or insolvent, or the filing by the Borrower or any guarantor of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, or the Borrower's or any guarantor's seeking or consenting to or acquiescence in the appointment of any trustee, receiver or liquidator of the Borrower or any guarantor or of all or any substantial part of the Mortgaged Property or of any or all of the rents, revenues, issues, earnings, profits, or income thereof, or the making of any general assignment for the benefit of creditors or the admission in writing of its inability to pay its debts generally as they become due; or

(e) The entry by a court of competent jurisdiction of any order, judgment, or decree approving a petition filed against the Borrower or any guarantor of any of the indebtedness secured hereby seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, which order, judgement or decree remains unvacated and unstayed for an aggregate of ten (10) days (whether or not consecutive) from the date of entry thereof, or the appointment of any trustee, receiver or liquidator of the Borrower or any guarantor or of all or any substantial part of the Mortgaged Property or of any or all of the rents, revenues, issues, earnings, profits or income thereof without the consent or acquiescence of the Borrower which appointment shall remain unvacated and unstayed for an aggregate of ten (10) days (whether or not consecutive); or

(f) The enforcement of any prior or junior lien or encumbrance on the Mortgaged Property or any part thereof or the failure to pay when due any amount owed under any note or other instrument secured by any prior or junior lien on the Mortgaged Property or any part thereof; or

2.02 Acceleration of Maturity. If an Event of Default shall have occurred, then the entire balance of the indebtedness secured hereby with interest accrued thereon (or such parts as Lender may elect) shall, at the option of the Lender, become due and payable without notice or demand, time being of the essence; and any omission on the part of the Lender to exercise such option when entitled to do so shall not be considered as a waiver of such right.

2.03 Lender's Power of Enforcement. If an Event of Default shall have occurred the Lender may, either with or without entry or taking possession as hereinabove provided or otherwise, proceed by suit or suits at law or in equity or any other appropriate proceeding or remedy to do any one or more of the following (simultaneously or in any order): (a) to enforce payment of the Note; (b) to foreclose this Mortgage; and (c) to pursue any other remedy available to Lender, all as the Lender may elect.

2.04 Power of Sale. If an Event of Default shall have occurred Lender may sell the Mortgaged Property to the highest bidder at public auction in front of the courthouse door in the county or counties, as may be required, where the Mortgaged Property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale, together with a description of the property to be sold, by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county or counties, as may be required, and, upon payment of the purchase money Lender or any person conducting the sale for Lender is authorized to execute to the purchaser at said sale a deed to the Mortgaged Property so purchased. Lender may bid at said sale and purchase the Mortgaged Property, or any part thereof, if the highest bidder therefor. At the foreclosure sale the Mortgaged Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner as Lender may elect.

2.05 Application of Foreclosure Proceeds. Unless otherwise required by applicable law, the proceeds of any foreclosure sale pursuant to Paragraph 2.04 of Article II shall be applied as follows:

(a) First, to the expenses of making the sale, including, a reasonable attorney's fee for such services as may be necessary in the collection of the indebtedness secured by this Mortgage or the foreclosure of this Mortgage;

(b) Second, to the repayment of any money, with interest thereon, which Lender may have paid, or become liable to pay, or which it may then be necessary to pay for taxes, insurance, assessments or other charges, liens, or debts as hereinabove provided, and as may be provided in the Loan Documents;

(c) Third, to the payment and satisfaction of the indebtedness (including but not limited to the Loan, and other indebtedness) secured hereby with interest to date of sale, whether or not all of such indebtedness be then due;

(d) Fourth, the balance, if any, shall be paid to the party or parties appearing of record to be the owner of the Mortgaged Property at the time of sale, after deducting any expense of ascertaining who is such owner, or as may otherwise be provided by law.

2.06 Lender's Option on Foreclosure. At the option of the Lender, this Mortgage may be foreclosed as provided by law or in equity, in which event a reasonable attorneys' fee shall, among

other costs and expenses, be allowed and paid out of the proceeds of the sale. In the event Lender exercises its option to foreclose this Mortgage in equity, Lender may, at its option, foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Property, and the failure to make any such tenants parties defendants to any such foreclosure proceeding and to foreclose their rights will not be, nor be asserted to be by the Borrower, a defense to any proceedings instituted by the Lender to collect the sums secured hereby, or to collect any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property.

2.07 Waiver of Exemption. Borrower waives all rights of exemption pertaining to real or personal property as to any indebtedness secured by or that may be secured by this Mortgage, and Borrower waives the benefit of any statute regulating or limiting the obtaining of a deficiency judgment or requiring that the value of the Mortgaged Property be set off against any part of the indebtedness secured hereby.

2.08 Borrower to Pay the Note on any Default in Payment; Application of Moneys by Lender. If default shall be made in the payment of any amount due under this Mortgage or the Note, then, at the option of Lender, the Borrower will pay to the Lender the whole amount due and payable under the Note; and in case the Borrower shall fail to pay the same forthwith the Lender shall be entitled to sue for and to recover judgment for the whole amount so due and unpaid together with costs, which shall include the reasonable compensation, expenses and disbursements of the Lender's agents and attorney.

2.09 Delay or Omission No Waiver. No delay or omission of the Lender or any holder of the Note to exercise any right, power or remedy accruing upon any default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such default, or acquiescence therein; and every right, power and remedy given by the Note, this Mortgage, the Loan Documents, or by the Other Indebtedness Instruments to the Lender may be exercised from time to time to time and as often as may be deemed expedient by the Lender.

2.10 Discontinuance of Proceedings--Positions of Parties, Restored. In case Lender shall have proceeded to enforce any right or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Lender, then and in every such case the Borrower and the Lender shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of the Lender shall continue as if no such proceeding had been taken.

2.11 Remedies Cumulative. No right, power, or remedy conferred upon or reserved to the Lender by this Mortgage is intended to be exclusive of any other right, power, or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder, or under the Note or now or hereafter existing at law or in equity or by statute.

2.12 Notice and Opportunity To Cure. As used herein, the term "Event of Default" shall not have occurred until the expiration of ten (10) days after Lender gives Borrower written notice of such event by sending or hand delivering such notice to the Borrower's last known business address and Borrower fails to completely cure such event within such ten (10) day period.

ARTICLE III

3.01 Heirs, Successors and Assigns Included in Parties. Wherever in this Mortgage one of the parties hereto is named or referred to, the heirs, administrators, executors, successors and assigns of such party shall be included, and all covenants and agreements contained in this Mortgage by or on behalf of the Borrower or by or on behalf of Lender shall bind and inure to the benefit of their respective heirs, administrators, executors, successors and assigns, whether so expressed or not.

3.02 Headings. The headings of the articles, sections, paragraphs and subdivisions of this Mortgage are for convenience of reference only, are not to be considered a part hereof, and shall not limit otherwise affect any of the terms hereof.

3.03 Gender. Whenever the context so requires, the masculine includes the feminine and neuter, and the singular includes the plural, and vice versa.

3.04 Invalid Provisions to Affect No Others. In case any one or more of the covenants, agreements, terms or provisions contained in this Mortgage or in the Note shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions contained herein, and in the Note shall be in no way affected, prejudiced or disturbed thereby.

3.05 Conflict in Loan Documents. In the event of conflict in the terms of any provision in this Mortgage or the Note, the terms of the provision most favorable to the Lender shall apply.

3.06 Instrument Under Seal. This Mortgage is given under the seal of all parties hereto, and it is intended that this Mortgage is and shall constitute and have the effect of a sealed instrument according to law.

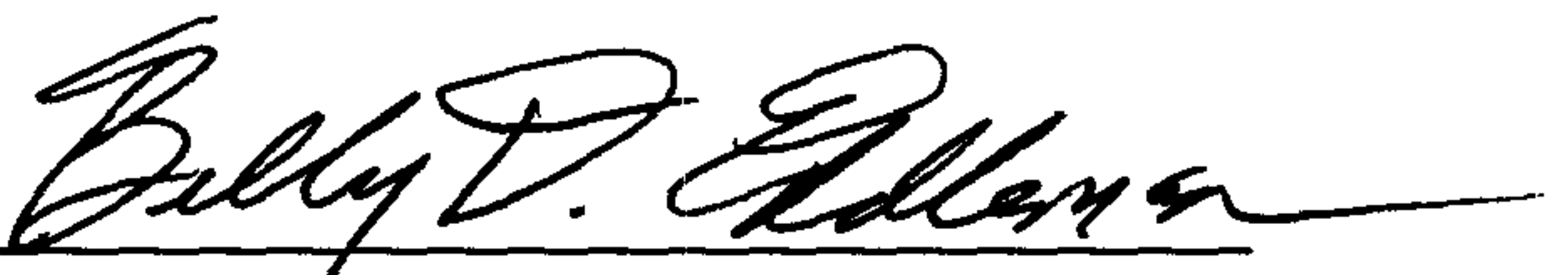
IN WITNESS WHEREOF, Borrower has caused this instrument to be executed and effective as of the day and year first above written.

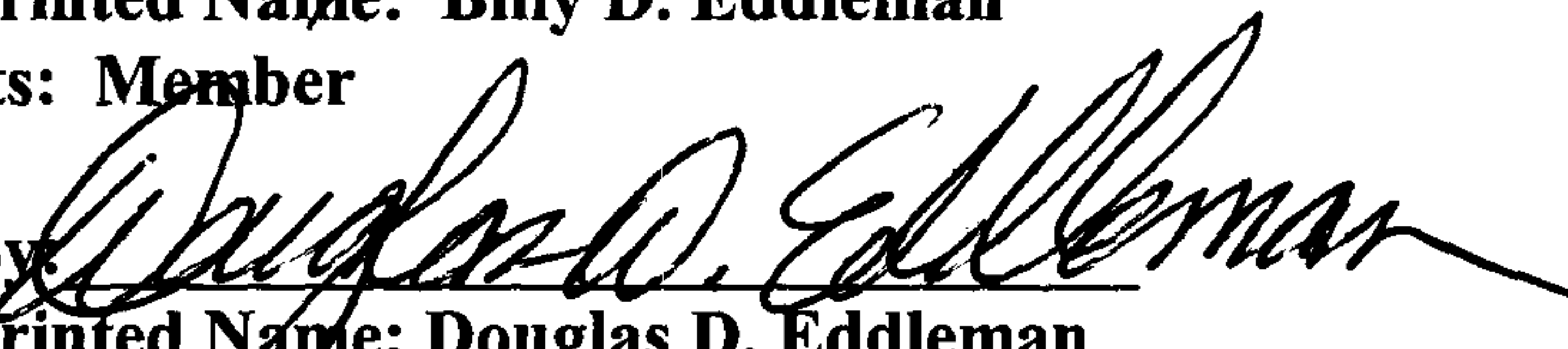
CAUTION: IT IS IMPORTANT THAT YOU THOROUGHLY READ THE CONTRACT BEFORE YOU SIGN IT.

BORROWER (Mortgagor, Debtor):

THE VILLAGE AT HIGHLAND LAKES, LTD., an Alabama limited partnership

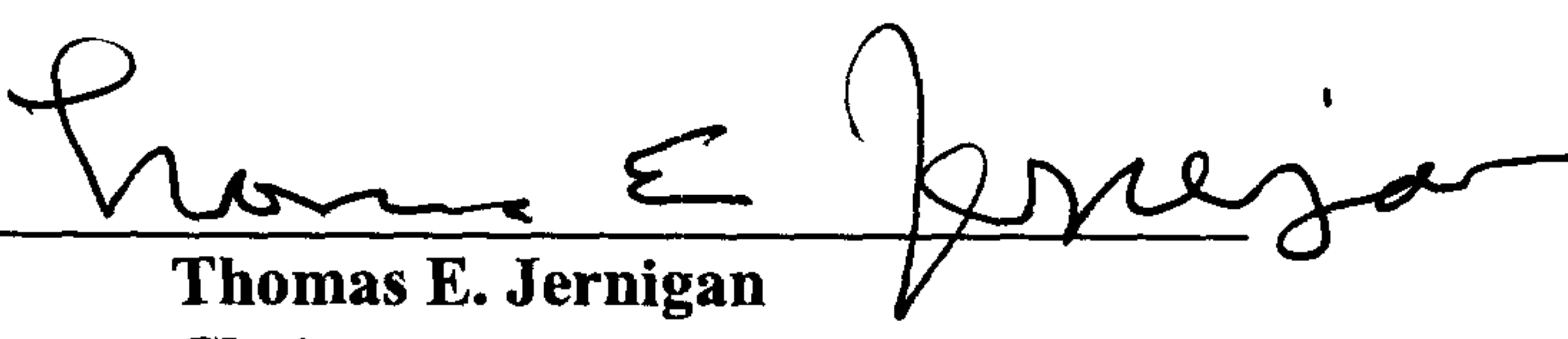
By: Eddleman Properties, L.L.C., an Alabama limited liability company
Its: General Partner

By: 
Printed Name: Billy D. Eddleman
Its: Member

By: 
Printed Name: Douglas D. Eddleman
Its: Member

LENDER (Mortgagee):

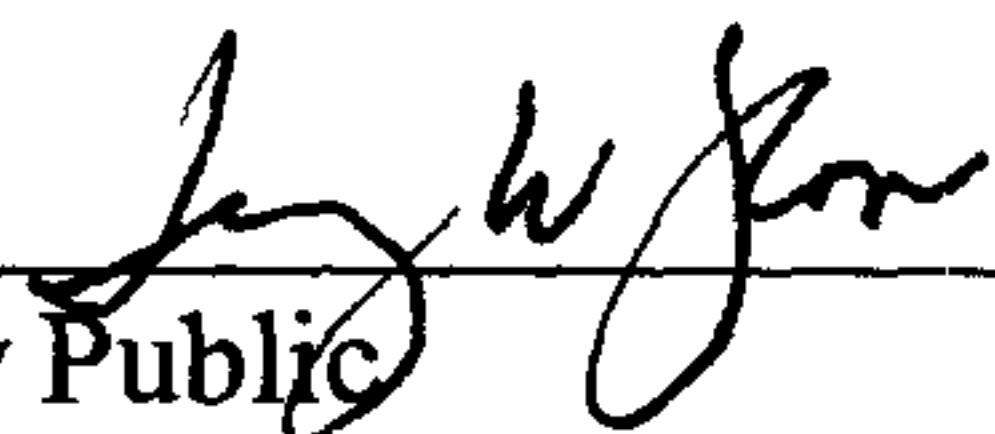
MARATHON CORPORATION

By: 
Printed Name: Thomas E. Jernigan
Title: Chairman

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that **Billy D. Eddleman** whose name as Member of **Eddleman Properties, L.L.C.**, an Alabama limited liability company, which is a general partner of The Village At Highland Lakes, Ltd. 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 instrument, he, as such member and with full authority, executed the same voluntarily for and as the act of said limited liability company as general partner of said limited partnership.

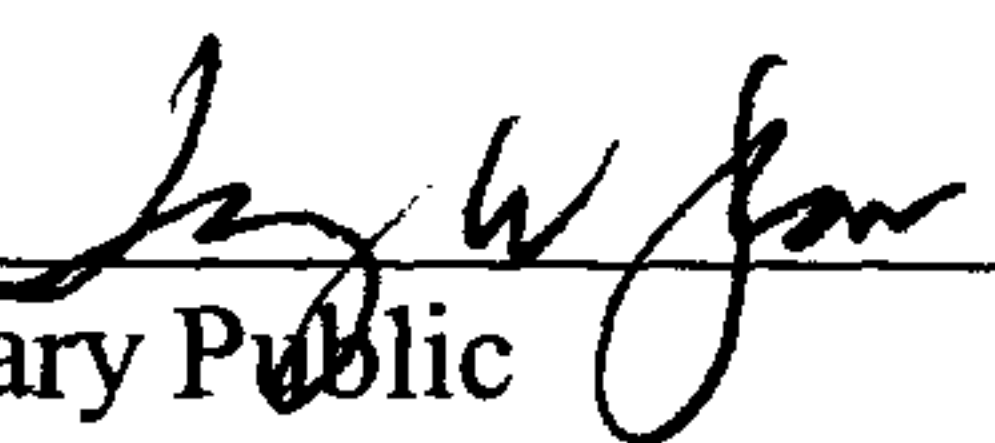
Given under my hand this 3rd day of June, 2004.


Notary Public
My commission expires: 2/22/08

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that **Douglas D. Eddleman** whose name as Member of **Eddleman Properties, L.L.C.**, an Alabama limited liability company, which is a general partner of The Village At Highland Lakes, Ltd. 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 instrument, he, as such member and with full authority, executed the same voluntarily for and as the act of said limited liability company as general partner of said limited partnership.

Given under my hand this 3rd day of June, 2004.


Notary Public
My commission expires: 2/22/08

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that **THOMAS E. JERNIGAN** whose name as the Chairman of **MARATHON 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 the 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 this 3rd day of June, 2004.

Jay W. Gou
Notary Public
My Commission Expires: 2/22/08

NOTARIAL SEAL
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EXHIBIT A

DESCRIPTION: TRACT 1

A PART OF SECTION 3 AND SECTION 4, TOWNSHIP 19 SOUTH, RANGE 1 WEST BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTHEAST CORNER OF SECTION 4, TOWNSHIP 19 SOUTH, RANGE 1 WEST AND RUN SOUTH $89^{\circ}25'46''$ WEST FOR 1331.46 FEET TO THE SOUTHWEST CORNER OF THE EAST $\frac{1}{4}$ OF SAID SECTION 4; THENCE RUN NORTH $00^{\circ}35'46''$ WEST FOR 5,293.68 FEET TO THE NORTHWEST CORNER OF SAID EAST $\frac{1}{4}$ OF SECTION 4; THENCE RUN NORTH $89^{\circ}17'26''$ EAST FOR 1,324.73 FEET TO THE NORTHWEST CORNER OF SECTION 3; THENCE RUN NORTH $89^{\circ}20'02''$ EAST ALONG THE NORTH LINE OF SAID SECTION 3 FOR 2,674.77 FEET TO THE NORTHEAST CORNER OF THE WEST $\frac{1}{2}$ OF SECTION 3; THENCE RUN SOUTH $00^{\circ}26'35''$ EAST FOR 235.36 FEET TO A POINT ON THE SOUTH RIGHT OF WAY LINE OF A PUBLIC ROAD; THENCE RUN SOUTH $68^{\circ}36'43''$ EAST ALONG SAID RIGHT OF WAY LINE FOR 289.40 FEET TO A POINT ON THE WEST RIGHT OF WAY LINE OF SHELBY COUNTY HIGHWAY NO. 41; THENCE RUN SOUTH $15^{\circ}07'19''$ WEST ALONG SAID RIGHT OF WAY LINE FOR 533.36 FEET TO THE POINT OF BEGINNING OF A CURVE TO THE LEFT, SAID CURVE HAVING A RADIUS OF 5,549.44 FEET; THENCE RUN ALONG SAID CURVE AND SAID RIGHT OF WAY LINE A CHORD BEARING OF SOUTH $09^{\circ}11'40''$ WEST FOR 1,148.20 FEET TO THE POINT OF A TANGENT TO SAID CURVE; THENCE RUN SOUTH $01^{\circ}19'33''$ WEST ALONG THE TANGENT TO SAID CURVE AND ALONG SAID RIGHT OF WAY LINE FOR 666.50 FEET TO A POINT ON THE SOUTH LINE OF THE NORTHWEST $\frac{1}{4}$ OF SAID SECTION 3; THENCE RUN SOUTH $89^{\circ}25'32''$ WEST ALONG SAID $\frac{1}{4}$ SECTION LINE FOR 1,245.25 FEET TO THE NORTHWEST CORNER OF THE NORTHEAST $\frac{1}{4}$ OF THE SOUTHWEST $\frac{1}{4}$ OF SAID SECTION 3; THENCE RUN SOUTH $00^{\circ}33'21''$ EAST ALONG THE WEST LINE OF SAID $\frac{1}{4}$ - $\frac{1}{4}$ SECTION FOR 1,325.29 FEET TO THE SOUTHWEST CORNER OF SAID $\frac{1}{4}$ - $\frac{1}{4}$ SECTION; THENCE RUN NORTH $89^{\circ}28'19''$ EAST FOR 1,075.91 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF SHELBY COUNTY HIGHWAY #41, SAID POINT BEING ON A CURVE TO THE RIGHT, HAVING A RADIUS OF 3,372.02 FEET; THENCE RUN ALONG SAID CURVE A CHORD BEARING OF SOUTH $21^{\circ}48'23''$ WEST FOR 241.38 FEET TO THE POINT OF A TANGENT TO SAID CURVE; THENCE RUN SOUTH $23^{\circ}51'25''$ WEST ALONG SAID TANGENT AND ALONG SAID RIGHT OF WAY LINE FOR 1,210.44 FEET TO A POINT ON THE SOUTH LINE OF SAID SECTION 3; THENCE RUN SOUTH $89^{\circ}31'05''$ WEST FOR 1,810.74 FEET TO THE POINT OF BEGINNING.

EXHIBIT A

LESS AND EXCEPT (NO. 1) THE FOLLOWING DESCRIBED TRACT OF LAND:
COMMENCE AT THE NORTHEAST CORNER OF THE SOUTHEAST $\frac{1}{4}$ OF SECTION 4,
TOWNSHIP 19 SOUTH, RANGE 1 WEST AND RUN SOUTH $00^{\circ}40'54''$ EAST ALONG THE
EAST LINE OF SAID $\frac{1}{4}$ SECTION FOR 374.05 FEET TO THE POINT OF BEGINNING OF
THE EXCEPTED TRACT OF LAND; THENCE RUN NORTH $46^{\circ}23'34''$ WEST FOR 668.14
FEET; THENCE RUN NORTH $03^{\circ}17'54''$ WEST FOR 134.39 FEET TO THE POINT OF
BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 265.00 FEET;
THENCE RUN ALONG SAID CURVE A CHORD BEARING OF NORTH $11^{\circ}56'53''$ EAST
FOR 141.03 FEET TO THE POINT OF A TANGENT TO SAID CURVE; THENCE RUN
NORTH $27^{\circ}11'40''$ EAST ALONG SAID TANGENT FOR 92.79 FEET TO THE POINT OF
BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 385.00 FEET; THENCE
RUN ALONG SAID CURVE A CHORD BEARING OF NORTH $19^{\circ}58'54''$ EAST FOR 96.93
FEET TO THE POINT OF A TANGENT TO SAID CURVE; THENCE RUN NORTH
 $12^{\circ}46'08''$ EAST ALONG SAID TANGENT FOR 140.34 FEET TO THE POINT OF
BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 185.00 FEET; THENCE
RUN ALONG SAID CURVE A CHORD BEARING OF NORTH $06^{\circ}52'09''$ WEST FOR
126.82 FEET TO THE POINT OF A TANGENT TO SAID CURVE; THENCE RUN NORTH
 $26^{\circ}30'26''$ WEST ALONG SAID TANGENT FOR 71.12 FEET TO THE POINT OF
BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 96.53 FEET;
THENCE RUN ALONG SAID CURVE A CHORD BEARING OF NORTH $24^{\circ}34'34''$ EAST
FOR 172.13 FEET TO THE POINT OF A TANGENT TO SAID CURVE; THENCE RUN
NORTH $75^{\circ}39'34''$ EAST ALONG SAID TANGENT FOR 120.42 FEET TO THE POINT OF
BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 200.60 FEET; THENCE
RUN ALONG SAID CURVE A CHORD BEARING OF NORTH $62^{\circ}24'19''$ EAST FOR 92.81
FEET TO THE END OF SAID CURVE AND THE POINT OF BEGINNING OF A CURVE TO
THE RIGHT, HAVING A RADIUS OF 85.00 FEET; THENCE RUN ALONG SAID CURVE A
CHORD BEARING OF NORTH $85^{\circ}42'20''$ EAST FOR 108.46 FEET TO THE POINT OF A
TANGENT TO SAID CURVE; THENCE RUN SOUTH $57^{\circ}44'23''$ EAST ALONG SAID
TANGENT FOR 34.45 FEET TO THE POINT OF BEGINNING OF A CURVE TO THE LEFT,
HAVING A RADIUS OF 285.00 FEET; THENCE RUN ALONG SAID CURVE A CHORD
BEARING OF SOUTH $71^{\circ}41'08''$ EAST FOR 138.74 FEET TO THE POINT OF A TANGENT
TO SAID CURVE; THENCE RUN SOUTH $85^{\circ}37'53''$ EAST ALONG SAID TANGENT FOR
215.42 FEET TO THE POINT OF BEGINNING OF A CURVE TO THE LEFT, HAVING A
RADIUS OF 135.00 FEET; THENCE RUN ALONG SAID CURVE A CHORD BEARING OF
NORTH $64^{\circ}28'05''$ EAST FOR 140.90 FEET TO THE POINT OF TANGENT TO SAID
CURVE; THENCE RUN NORTH $34^{\circ}34'02''$ EAST ALONG SAID TANGENT FOR 258.08
FEET TO THE POINT OF BEGINNING OF A CURVE TO THE RIGHT, HAVING A
RADIUS OF 195.00 FEET; THENCE RUN ALONG SAID CURVE A CHORD BEARING OF
NORTH $63^{\circ}08'59''$ EAST FOR 194.56 FEET TO THE POINT OF A TANGENT TO SAID

EXHIBIT A

CURVE; THENCE RUN SOUTH 88°16'03" EAST ALONG SAID TANGENT FOR 28.09 FEET TO THE POINT OF BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 485.00 FEET; THENCE RUN ALONG SAID CURVE A CHORD BEARING OF NORTH 84°50'27" EAST FOR 116.67 FEET TO THE POINT OF A TANGENT TO SAID CURVE; THENCE RUN NORTH 77°56'58" EAST ALONG SAID TANGENT FOR 111.32 FEET; THENCE RUN SOUTH 35°09'17" EAST FOR 26.88 FEET; THENCE RUN SOUTH 36°29'04" WEST FOR 140.76 FEET TO THE POINT OF BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 185.00 FEET; THENCE RUN ALONG SAID CURVE A CHORD BEARING OF SOUTH 24°33'35" WEST FOR 77.01 FEET TO THE POINT OF A TANGENT TO SAID CURVE; THENCE RUN SOUTH 12°38'06" WEST ALONG SAID TANGENT FOR 334.38 FEET TO THE POINT OF BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 285.00 FEET; THENCE RUN ALONG SAID CURVE A CHORD BEARING OF SOUTH 07°11'07" WEST FOR 54.22 FEET TO THE POINT OF A TANGENT TO SAID CURVE; THENCE RUN SOUTH 01°44'08" WEST FOR 67.49 FEET TO THE POINT OF BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 335.00 FEET; THENCE RUN ALONG SAID CURVE A CHORD BEARING OF SOUTH 05°34'23" EAST FOR 85.46 FEET TO THE POINT OF A TANGENT TO SAID CURVE; THENCE RUN SOUTH 12°52'53" EAST ALONG SAID TANGENT FOR 67.01 FEET TO THE POINT OF BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 385.00 FEET; THENCE RUN ALONG SAID CURVE A CHORD BEARING OF SOUTH 30°08'38" EAST FOR 231.99 FEET TO THE POINT OF A TANGENT TO SAID CURVE; THENCE RUN SOUTH 47°24'23" EAST ALONG SAID TANGENT FOR 103.43 FEET TO THE POINT OF BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 125.00 FEET; THENCE RUN ALONG SAID CURVE A CHORD BEARING OF SOUTH 15°28'09" EAST FOR 139.35 FEET TO THE POINT OF A TANGENT TO SAID CURVE; THENCE RUN SOUTH 16°28'05" WEST ALONG SAID TANGENT FOR 16.12 FEET TO THE POINT OF BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 285.00 FEET; THENCE RUN ALONG SAID CURVE A CHORD BEARING OF SOUTH 07°31'06" WEST FOR 89.03 FEET TO THE POINT OF A TANGENT TO SAID CURVE; THENCE RUN SOUTH 01°25'53" EAST ALONG SAID TANGENT FOR 65.39 FEET TO THE POINT OF BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 391.50 FEET; THENCE RUN ALONG SAID CURVE A CHORD BEARING OF SOUTH 24°49'08" WEST FOR 358.73 FEET TO THE POINT OF A TANGENT TO SAID CURVE; THENCE RUN SOUTH 51°04'09" WEST ALONG SAID TANGENT FOR 238.86 FEET TO THE POINT OF BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 135.00 FEET; THENCE RUN ALONG SAID CURVE A CHORD BEARING OF NORTH 78°19'19" WEST FOR 238.49 FEET TO THE POINT OF A TANGENT TO SAID CURVE; THENCE RUN NORTH 27°42'47" WEST ALONG SAID TANGENT FOR 31.05 FEET TO THE POINT OF BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 65.00 FEET; THENCE RUN ALONG SAID CURVE A CHORD BEARING OF NORTH 60°38'50" WEST FOR 74.73

EXHIBIT A

FEET TO THE POINT OF BEGINNING OF A TANGENT TO SAID CURVE; THENCE RUN SOUTH 86°25'06" WEST FOR 462.62 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPT (NO. 2) A 30.00 FOOT WIDE PUBLIC ROAD RIGHT OF WAY (FOWLER LAKE ROAD). SAID RIGHT OF WAY BEING 15.00 FOOT WIDE ON BOTH SIDES OF A CENTERLINE DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF THE NORTHWEST ¼ OF SECTION 3, TOWNSHIP 19 SOUTH, RANGE 1 WEST AND RUN SOUTH 00°26'35" EAST ALONG THE WEST LINE OF SAID ¼ SECTION FOR 219.05 FEET TO THE POINT OF BEGINNING OF SAID RIGHT OF WAY CENTERLINE; THENCE RUN ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 753.89 FEET AND A CHORD BEARING OF NORTH 77°52'35" WEST FOR 179.21 FEET TO THE END OF SAID CURVE AND THE POINT OF BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 128.87 FEET; THENCE RUN ALONG SAID CURVE A CHORD BEARING OF SOUTH 68°33'14" WEST FOR 120.38 FEET TO THE POINT OF A TANGENT TO SAID CURVE; THENCE RUN SOUTH 41°47'38" WEST ALONG SAID TANGENT FOR 102.94 FEET TO THE POINT OF BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 1,111.00 FEET AND A CHORD BEARING OF SOUTH 44°58'21" WEST FOR 123.28 FEET TO THE POINT OF A TANGENT TO SAID CURVE; THENCE RUN SOUTH 48°09'05" WEST ALONG SAID TANGENT FOR 143.50 FEET TO THE POINT OF BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 406.74 FEET AND A CHORD BEARING OF SOUTH 55°47'04" WEST FOR 108.37 FEET TO THE POINT OF A TANGENT TO SAID CURVE; THENCE RUN SOUTH 63°25'04" WEST FOR 241.69 FEET TO THE POINT OF BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 576.59 FEET; THENCE RUN ALONG SAID CURVE A CHORD BEARING OF SOUTH 49°41'31" WEST FOR 277.17 FEET TO THE POINT OF A TANGENT TO SAID CURVE; THENCE RUN SOUTH 32°08'44" WEST ALONG SAID TANGENT FOR 147.85 FEET TO THE POINT OF BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 738.50 FEET; THENCE RUN ALONG SAID CURVE A CHORD BEARING OF SOUTH 46°07'52" WEST FOR 360.53 FEET TO THE POINT OF A TANGENT TO SAID CURVE; THENCE RUN SOUTH 60°07'00" WEST FOR 164.31 FEET TO THE POINT OF BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 198.29 FEET; THENCE RUN ALONG SAID CURVE A CHORD BEARING OF SOUTH 71°31'17" WEST FOR 78.94 FEET TO THE END POINT OF SAID ROAD RIGHT OF WAY.

EXHIBIT A

DESCRIPTION: TRACT 2

A PART OF SECTION 3, TOWNSHIP 19 SOUTH, RANGE 1 WEST BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTHEAST CORNER OF THE SOUTHWEST $\frac{1}{4}$ OF SECTION 3, TOWNSHIP 19 SOUTH, RANGE 1 WEST AND RUN SOUTH $89^{\circ}31'05''$ WEST ALONG THE SOUTH LINE OF SAID SECTION 3 FOR 755.32 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF SHELBY COUNTY HIGHWAY #41; THENCE RUN NORTH $23^{\circ}51'25''$ EAST ALONG SAID RIGHT OF WAY LINE FOR 1,174.26 FEET TO THE POINT OF BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 3,452.02 FEET; THENCE RUN ALONG SAID CURVE AND SAID RIGHT OF WAY LINE A CHORD BEARING OF NORTH $21^{\circ}33'41''$ EAST FOR 276.63 FEET; THENCE RUN NORTH $89^{\circ}28'19''$ EAST FOR 168.47 FEET TO A POINT ON THE EAST LINE OF SAID SOUTHWEST $\frac{1}{4}$ OF SECTION 3; THENCE RUN SOUTH $00^{\circ}26'35''$ EAST FOR 1,326.37 FEET TO THE POINT OF BEGINNING.

EXHIBIT B

1. General and special taxes or assessments for the year 2004 and subsequent years not yet due and payable.
2. Title to all minerals within and underlying the premises, together with all mining rights and other rights, privileges and immunities relating thereto, including rights set out in Deed 81, Page 417 in the Probate Office.
3. Transmission Line Permit(s) to Alabama Power Company as shown by instrument(s) recorded in Deed 247, Page 905 and Deed 139, Page 569 and Deed 134, Page 411 in the Probate Office.
4. Right(s) of Way(s) granted to Shelby County by instrument(s) recorded in Deed 196, Pages 237, 248 and 254 in the Probate Office.
5. Easement(s) to Shelby County as shown by instrument recorded in Instrument Number 1992-15747 and Instrument Number 1992-24264 in the Probate Office.
6. Ingress and Egress Easements as set out in Real 321, Page 812 in the Probate Office.
7. Right(s) of Way(s) for roadway as set out in Real 103, Page 844 and Map Book 3, Page 148 in the Probate Office.
8. The following items as shown on the survey of Arrington Engineering & Land Surveying, Inc. undated:
 - a. Encroachment(s) of overhead electric lines onto and/or off of the land.
 - b. Encroachment(s) of gas lines and/or valves onto and/or off the land.
 - c. Encroachment(s) of utility box, telephone control box and meter pole.
 - d. 30 foot right of way for un-named road.