

THE STATE OF ALABAMA     )  
SHELBY COUNTY            )

### MORTGAGE

**THIS MORTGAGE** ("Security Instrument") is given on this the 1st day of October, 2004. The grantor is **Lacey's Grove, LLC, an Alabama limited liability company**, whose address is 4 Office Park Circle, Suite 212, Birmingham, Alabama 35223 ("Borrower"). This Security Instrument is given to **Agnes L. Harris and husband, George C. Harris, Margaret L. Kerlin and husband, Reginald Kerlin, Stanley Linwood Lacey, Suzanne Lacey, Amy Templin Green Fiorella and Leslie Ann Gorman**, whose address is c/o Corretti, Newsom & Hawkins, Attention: Douglas Corretti, 1804 7<sup>th</sup> Avenue North, Birmingham, Alabama 35203 (collectively, "Lender"). Borrower owes Lender the principal sum of NINE HUNDRED SIXTY-FOUR THOUSAND THREE HUNDRED and No/100 (\$964,300.00) DOLLARS. This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for payments, with the full debt, if not paid earlier, due and payable on the 1<sup>st</sup> day of April 2006. This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, and all renewals, extensions and modifications; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender and Lender's successors and assigns, with power of sale, the following described property located and situated in Shelby County, Alabama, to-wit:

PARCEL I: (Intentionally omitted)

PARCEL II:

Commence at the Southwest corner of the Southeast Quarter of the Northeast Quarter of Section 8, Township 21 South, Range 3 West, Huntsville Principal Meridian, Shelby County, Alabama; thence North 01°08'57" East, along and with the East line of said quarter-quarter section, 1326.32 feet to a point being the Point of Beginning; thence continue North 01°08'57" East along the West line of the Northeast quarter of the Northeast quarter of said Section 8, 1324.48 feet to a point at the Northwest corner of said quarter-quarter section; thence South 88°15'09" East, along the North line of said quarter-quarter section, 1336.32 feet to the Northeast corner of said Section 8; thence South 89°08'15" East along and with the North line of the Northwest quarter of the Northwest quarter of Section 9, Township 21 South, Range 3 West, Huntsville Principal Meridian, Shelby County, Alabama, 808.87 feet to a point in the centerline of Beaver Dam Creek; thence southerly and easterly along the centerline of said Beaver Dam Creek the following 19 calls; South 06°18'21" West, 84.48 feet to a point; thence North 79°28'30" West, 44.25 feet to a point; thence South 75°17'28" West, 51.07 feet to a point; thence South 26°41'24" West, 51.48 feet to a point; thence South 06°57'58" West, 14.02 feet to a point; thence South 73°30'09" East, 26.77 feet to a point; thence South 52°33'57" East, 121.10 feet to a point; thence South 07°05'54" West, 48.55 feet to a point; thence South 60°00'07" East, 33.24 feet to a point; thence South 24°37'24" East, 93.31 feet to a point; thence South 64°08'32" East, 58.15 feet to a point; thence South 27°00'36" East, 39.50 feet to a point; thence South 18°03'07" West, 42.69 feet to a point; thence South 45°18'54" East, 85.64 feet to a point; thence South 40°39'55" East, 135.24 feet to a point; thence South 30°02'38" West, 31.16 feet to a point; thence South 31°22'04" West, 17.00 feet to a point; thence South 73°15'54" West, 115.67 feet to a point; thence South 35°42'48" East, 108.55 feet to a point; thence leaving said Beaver Dam Creek centerline, South 89°53'10" West, 919.55 feet to a point; thence North 88°36'16" West, 125.19 feet to a point; thence South 01°16'01" West, 503.45 feet to a point on the South line of the Northeast quarter of the Northeast quarter of Section 8, Township 21 South, Range 3 West, Huntsville Principal Meridian, Shelby County, Alabama; thence along and with said South quarter-quarter section line North 88°14'04" West, 1211.57 feet to the Point of Beginning, said tract containing 55.89 acres, more or less.



**ALSO, PARCEL III:**

Commencing at the Southeast corner of the Northeast Quarter of the Southwest Quarter of Section 8, Township 21 South, Range 3 West, Huntsville Principal Meridian, Shelby County, Alabama; thence North 01°08'57" East, 490.40 feet to the Point of Beginning; thence North 88°18'23" West, 1335.41 feet to a point on the West line of said quarter-quarter section; thence North 01°03'13" East 2161.97 feet to the Northwest corner of the Northwest quarter of the Northeast quarter; thence South 88°15'09" East, along and with the North line of said quarter-quarter section, 1339.03 feet to the Northeast corner of said quarter-quarter section; thence South 01°08'57" West, along and with the East line of said quarter-quarter section 2160.67 feet to the Point of Beginning, containing 66.34 acres, more or less.

**TOGETHER WITH A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS TO AND FROM PARCELS II AND III DESCRIBED HEREINABOVE, OVER, ON AND ACROSS THE FOLLOWING DESCRIBED REAL PROPERTY:**

Begin at the Southwest corner of the Southeast Quarter of the Northeast Quarter of Section 8, Township 21 South, Range 3 West, Huntsville Principal Meridian, Shelby County, Alabama; thence North 01°08'57" East, along and with the East line of said quarter-quarter section, 1326.59 feet to the Northwest corner of said quarter-quarter section; thence South 88°14'04" East, along and with the North line of said quarter-quarter section, 1211.57 feet to a point; thence South 01°16'01" West 925.97 feet to a point; thence South 86°57'08" East 123.79 feet to a point; thence South 89°05'57" East 993.95 feet to the Westerly right-of-way margin of Shelby County Highway #17; thence South 02°27'06" West 400.31 feet to a point on the South line of the Southwest quarter of the Northwest quarter of Section 9; thence North 88°51'54" West, along and with the South line of said quarter-quarter section, 985.08 feet to the southwest corner of said quarter-quarter section; thence North 88°18'25" West, along and with the South line of the Southeast quarter of the Northeast quarter of Section 8, 1333.13 feet to the point of beginning, containing 47.01 acres, more or less.

SUBJECT TO any easements, restrictions, covenants, liens and encumbrances of record, if any.

THIS IS A PURCHASE MONEY FIRST MORTGAGE, given for the purpose of securing the balance due on the purchase price of the hereinabove described real property.

THIS MORTGAGE CONSTITUTES A SECURITY AGREEMENT under the Uniform Commercial Code of the State of Alabama so long as same remains in full force and effect.

TO HAVE AND TO HOLD this property unto Lender and Lender's successors and assigns, forever, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and have the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.



## UNIFORM COVENANTS.

1. **Payment of Principal, Interest and Late Charge.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and late charges due under the Note, if any.
2. **Evidence of Payment for Taxes and Insurance.** Borrower shall provide to Lender evidence of the payment of the ad valorem taxes no later than December 1<sup>st</sup> of each year of the loan term. Borrower shall also provide Lender evidence of the payment of the annual premium for hazard insurance coverage on any improvements now or hereafter erected and located on the hereinabove described real property no later than thirty (30) days prior to the due date of said annual premium.
3. **Application of Payments.** All payments received by Lender under paragraph 1 shall be applied as follows: FIRST, to interest due under the Note, if any; SECOND, to amortization of the principal of the Note; and THIRD, to late charges due under the Note.
4. **Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines and impositions attributable to the Property, which may attain priority over this Security Instrument, and leasehold payments or ground rents, if any. Borrower shall pay these obligations in the manner provided in paragraph 2. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this paragraph.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agree in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contest in good faith the lien by, or defend against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien or forfeiture of any part of the Property; or (c) secure from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien, which may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

5. **Hazard Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage" and any other hazards for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's approval, which shall not be unreasonably withheld.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard mortgagee clause. Lender shall have the right to hold the policies and renewals. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this



Security Instrument, whether or not then due, with any excess paid to Borrower. If Borrower abandon the Property, or do not answer within 30 days of notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay sums secured by this Security Instrument, whether or not then due. The 30-day period will begin when the notice is given.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the payments referred to in paragraph 1 or change the amount of the payment. If under paragraph 19 the Property is acquired by Lender, Borrower's rights to any insurance policies and proceeds resulting from damage to the Property prior to the acquisition shall pass to Lender to the extent of the sums secured by this Security Instrument immediately prior to the acquisition.

- 6. Preservation and Maintenance of Property; Leaseholds.** Borrower shall repair and care for the Property and at all times maintain the Property in as good condition as the Property is as of the date hereof, reasonable wear and tear alone excepted. Borrower shall not destroy, damage or allow the Property to deteriorate or commit waste. If this Security Instrument is on a leasehold, Borrower shall comply with the provisions of the lease, and if Borrower acquire fee title to the Property, the leasehold and fee title shall not merge unless Lender agrees to the merger in writing.
- 7. Protection of Lender's Rights in the Property.** If Borrower fails to perform the covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or to enforce laws or regulations), then Lender may do and pay for whatever is necessary to protect the value of the Property and Lender's rights in the Property. Lender's actions may include paying any sums secured by a lien, which has priority over the Security Instrument, appearing in court, paying reasonable attorney's fees and entering on the Property to make repairs. Although Lender may take action under this paragraph 7, Lender does not have to do so.

Any amounts disbursed by Lender under this paragraph 7 shall become additional debt of Borrower secured by this Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

- 8. Inspection.** Lender or its agent may make reasonable entries upon and inspections of the Property. Lender shall give Borrower notice at the time of or prior to an inspection specifying reasonable cause for the inspection.
- 9. Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender.

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Security Instrument, whether or not they due, with any excess paid to Borrower. In the event of a partial taking of the Property, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the proceeds multiplied by the following fraction: (a) the total of the sums secured immediately before the taking, divided by (b) the fair



market value of the Property immediately before the taking. Any balance shall be paid to Borrower.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemnor offers to make an award or settle a claim for damages, Borrower fail to respond to Lender within 30 days after the notice is given, Lender is authorized to collect and apply the proceeds, at its option, either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due.

Unless Lender and Borrower otherwise agrees in writing, any application of proceeds to principal shall not extend or postpone the due day of the payments referred to in paragraph 1 or change the amount of such payments.

- 10. Borrower Not Released; Forbearance by Lender a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successors in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.
- 11. Successors and Assigns Bound; Joint and Several Liability; Co-signers.** The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions in paragraph 17. Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey that Borrower's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent.
- 12. Loan Charges.** If the loan secured by this Security Instrument is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charged total to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge under the Note.
- 13. Legislation Affecting Lender's Rights.** If enactment or expiration of applicable laws has the effect of rendering any provision of the Note or this Security Instrument unenforceable according to its terms, Lender, at its option, may require immediate payment in full of all sums secured by this Security Instrument and may invoke any remedies permitted by paragraph 19. If Lender exercises this option, Lender shall take the steps specified in the second paragraph of paragraph 17.



**14. Notices.** Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designate by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any other address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.

**15. Governing Law; Severability.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

**16. Borrower' Copy.** Borrower shall be given one conformed copy of the Note and of this Security Instrument.

**17. Transfer of the Property or a Beneficial Interest in Borrower.** If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

**18. Borrower' Right to Reinstate.** If Borrower meet certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earlier of : (a) 5 days (or such other period as applicable law may specify for reinstatement) before sale of the Property pursuant to any power of sale contained in this Security Instrument; or (b) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pay Lender all sums which then would be due under this Security Instrument and the Note had no acceleration occurred; (b) cure any default of any other covenants or agreements; (c) pay all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees; and (d) take such action as Lender may reasonably require to assure that the lien of this Security Instrument, Lender's rights in the Property and Borrower' obligation to pay the sums secured by this Security Instrument shall continue unchanged. Upon reinstatement by Borrower, this Security Instrument and the obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under paragraphs 13 or 17.

**NON-UNIFORM COVENANTS.** Borrower and Lender further covenant and agree as follows:

**19. Acceleration; Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrower' breach of any covenant or agreement in this



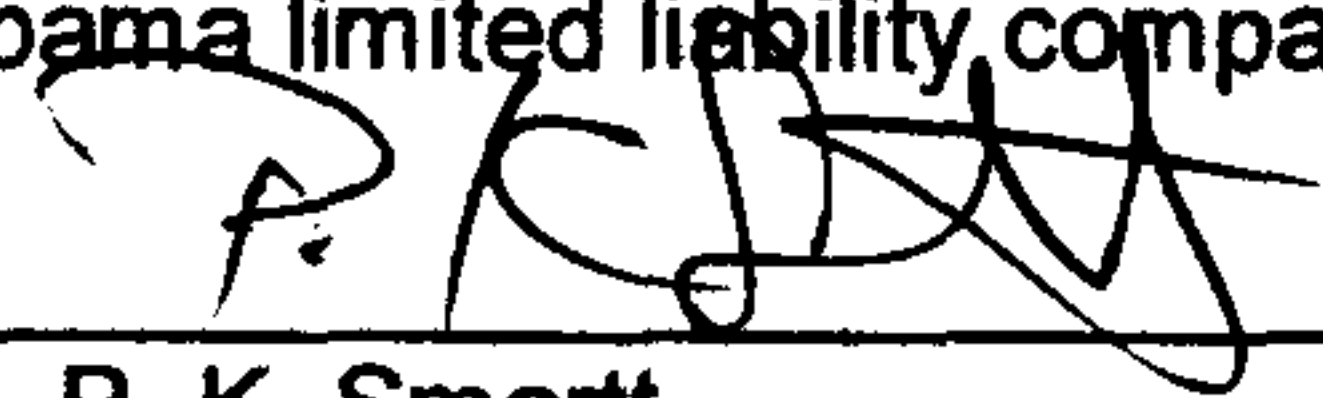
Security Instrument (but not prior to acceleration under paragraphs 13 and 17 unless applicable law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration, and the right to bring court action to assert the non-existence of default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 19, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall give a copy of a notice to Borrower in the manner provided in paragraph 14. Lender shall publish the notice of sale once a week for three consecutive weeks in a newspaper in Shelby County, Alabama, and thereupon shall sell the Property to the highest bidder at public auction at the front door of the County Courthouse of this County. Lender shall deliver to the purchaser Lender's deed conveying the Property. Lender or its designee may purchase the Property at any sale. Borrower covenant and agree that the proceeds of the sale shall be applied in the following order: (a) FIRST, to all expenses of the sale, including, but not limited to, reasonable attorneys' fees; (b) SECOND, to all sums secured by this Security Instrument; and (c) THIRD, any excess to the person or persons legally entitled to it.

20. **Lender in Possession.** Upon acceleration under paragraph 19 or abandonment of the Property, Lender (in person, by agent or by judicially appointed receiver) shall be entitled to enter upon, take possession of and manage, the Property and to collect the rents of the Property including those past due. Any rents collected by Lender or the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorneys' fees, and then to the sums secured by this Security Instrument.
21. **Partial Release.** In the event Borrower pays to Lender the sum of \$300,000.00 on or before 1<sup>st</sup> day of July, 2005, if Borrower is not then in default under the terms of the Note or this Security Instrument, then in that event, Lender shall execute and deliver to Borrower an instrument releasing Parcel II from this Security Instrument. Borrower shall pay any recordation costs.
22. **Release.** Upon payment of all sums secured by this Security Instrument, Lender shall release this Security Instrument without charge to Borrower. Borrower shall pay any recordation costs.
23. **Waivers.** Borrower waives all rights of homestead exemption in the Property and relinquishes all rights of curtesy and dower of the Property.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument.

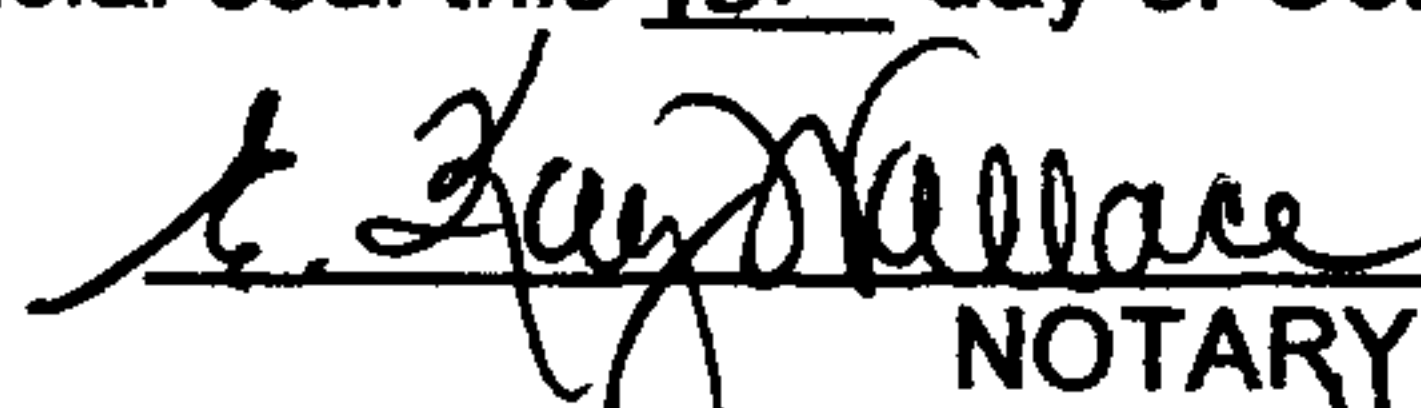
LACEY'S GROVE, LLC,  
an Alabama limited liability company

By:  (SEAL)  
P. K. Smartt  
Its: Member

THE STATE OF ALABAMA )  
JEFFERSON COUNTY )

I, the undersigned authority, a Notary Public in and for said County, hereby certify that P. K. Smartt, whose name as Member of Lacey's Grove, LLC, an Alabama limited liability company, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, as such member and with full authority, executed the same voluntarily as and for the act of said limited liability company.

Given under my hand and official seal this 1st day of October, 2004.

  
NOTARY PUBLIC  
My commission expires: 11/28/04

THIS INSTRUMENT WAS PREPARED BY:  
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