

AGREEMENT

This Agreement is made and entered into this 2 day of ~~February~~ ^{May}, 2005, by and between SOUTHHALL OF HOOVER, LLC, an Alabama limited liability company (herein referred to as "South Hall"), The Industrial Development Board of the City of Vincent (herein referred to as the IDB) and DLR ASSOCIATES, LLC, a Georgia limited liability company (herein referred to as "DLR").

RECITALS

DLR has entered into a contract to purchase certain real property located in Shelby County, Alabama, described as Lot B, according to the survey of Spectrum-280 Subdivision as recorded in Map Book 32, Page 111, in the Probate Office of Shelby County, Alabama (herein referred to as the "Property").

The Property has certain restrictions (herein referred to as the "Restrictions") as set forth in that certain Warranty Deed (herein referred to as the "Warranty Deed") from Dewberry Real Estate Company, Inc. (herein referred to as "Dewberry") to Gulf Oil Corporation recorded in Book 320, Page 427 of the Shelby County Probate Office. The Restrictions as contained in Paragraph 2 of the Warranty Deed allow only certain uses (herein referred to as the "Uses"). DLR desires to use the Property for a car wash facility, and DLR requires the consent of the IDB and SouthHall (successors to Dewberry).

Dewberry granted ingress and egress in the Warranty Deed and the parties are desirous of modifying the provisions relating to ingress and egress.

In order for SouthHall and the IDB to grant their consent, SouthHall and the IDB require certain considerations.

Now, therefore, in consideration of the premises, and the mutual covenants and conditions herein contained, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Based on the covenants and agreements herein contained, the Property may be used for the operation of a car wash facility in addition to the Uses as set forth in the Warranty Deed, and for no other use, and SouthHall and the IDB hereby consent to the Property being used for the operation of a car wash facility.
2. DLR, at its sole cost and expense, shall commence and diligently pursue to completion the following Recommended Roadway Improvements (the "Approved Plans") issued by Darrell B. Skipper, P.E., in his memorandum dated August 2, 2004 as amended by Memorandum dated January 19, 2005:

- a. A cross-sectional width of 24 feet shall be provided along Dewberry Drive. Any necessary roadway widening shall be accommodated along the side of Dewberry Drive adjacent to the Property.
 - b. Access to the Property shall be facilitated via an access driveway along Dewberry Drive.
 - c. The curb radius of the existing intersection of U.S. Highway 280 and Dewberry Drive shall be modified to a radius of 45 degrees to enhance safety and operation of the right turn movement onto Dewberry Drive from U.S. Highway 280.
 - d. No ingress access to the Property shall be constructed to intersect U.S. Highway 280.
 - e. At no time will there be any parking of automobiles or stacking of automobiles in Dewberry Drive; Dewberry Drive will remain open and unimpeded at all times; and DLR agrees to maintain sufficient lanes on its Property for the stacking of automobiles entering the car wash at all times.
3. The Property shall be further restricted as follows:
- a. Access to the Property from Dewberry Drive shall be for ingress to the Property only and the Property shall not use Dewberry Drive for a means of egress to U. S. Highway 280. DLR shall post directional signs, if needed, to insure that Dewberry Drive is used for ingress to the Property only.
 - b. No building shall be built on the Property which is more than twenty-five (25) feet in height.
 - c. Any retaining wall constructed on the Property shall be constructed of birch colored interlocking, rough faced concrete blocks, commonly known as Keystone Block, similar to those used on the Home Depot facility on U. S. Highway 280, in Birmingham, Alabama.
 - d. No garbage or trash collection shall be conducted on the Property which uses Dewberry Drive as a means of ingress or egress.
 - e. The Property shall not be used for any purpose which is a nuisance or annoyance to SouthHall or the tenants of SouthHall, or which might, in the reasonable judgement of SouthHall, materially damage the goodwill or reputation of SouthHall's business, or tend to injure or depreciate SouthHall's property.
4. DLR agrees that all construction activities performed by it shall be performed in accordance with the Approved Plans and in compliance with all applicable laws, rules, regulations, orders and ordinances of the city, county, state and federal governments, or

any department or agency thereof. DLR agrees that its construction activities shall not be conducted by use of Dewberry Drive and that all construction activities be conducted by use of the BP Service Station entrance. All storage of materials and the parking of construction vehicles, including vehicles of workers, shall occur only within the boundaries of the Property. DLR shall design, construct and maintain the Property in accordance with the following: (a) all utilities serving the Property must be extended entirely under ground and there shall be no lines, services, poles, wires, or other utility facilities, whether similar or dissimilar, which shall be constructed or permitted to remain above ground level; (b) decorative screening and/or landscaping will be provided as necessary in order to obscure from public view all trash rooms, dumpsters, loading and service areas, mechanical and electrical equipment, storage facilities and bins, and other building appurtenances which may be aesthetically undesirable; and (c) appropriate screening shall be provided to screen roof-mounted equipment, roof vents and other appurtenances from public view.

5. The Property shall be maintained in a first class condition and repair, and in a good, clean, neat and safe condition, free and clean of all debris and trash, and in compliance with all laws, rules, regulations, orders and ordinances and the requirements of any governmental authority exercising jurisdiction thereover.
6. In the event the improvements located on the Property are damaged by fire or other casualty (whether insured or not), then DLR shall promptly remove the debris resulting from such event and provide a sight barrier within a reasonable period of time thereafter, and shall either (a) repair or restore the improvements so damaged, such repair or restoration to be performed in accordance with the Approved Plans, or (b) erect such other building improvements in such location, and in accordance with approved plans and specifications, subject to the reasonable approval of SouthHall, or (c) demolish the improvements and restore the Property to an attractive condition. DLR shall have the option to choose which of the forgoing alternatives to perform, but DLR shall be obligated to perform one (1) of such alternatives. DLR shall give written notice to SouthHall within thirty (30) days from the date of such casualty of which alternative it has selected.
7. DLR shall issue to SouthHall (a) two hundred (200) free car wash certificates entitling the holder of such certificates to one (1) free car wash, and (b) five (5) cards which entitling the holder of such cards unlimited free car washes; provided such holders are owners or key employees of SouthHall and/or Alacare Health Home Services, Inc. ("Alacare"), and designated in advance by South Hall or its authorized agent. The cards may be transferred from time to time from one owner or key employee to another owner or key employee. The agreements contained in the paragraph shall be binding so long as DLR owns or operates a car wash on the Property.
8. The Property shall be subject to a Right of Second Refusal, second, subject and subordinate to the Refusal Option (the RO) in favor of BP Exploration & Oil, Inc. (BP) contained in deed recorded in Instrument #2001-02850, Probate Office of Shelby County,

Alabama, said Right of Second Refusal being based on the following terms and conditions:

(a) NOTICE PROCEDURE: In the event that DLR receives bona fide offer to purchase all or a portion of the Property and if DLR desires to accept said offer (the "Offer"), DLR shall first request that the Offer be sent to it in writing, and, upon receipt of the written offer, DLR shall promptly deliver the offer to BP, requesting that BP either waive or exercise the RO. Upon notice from BP of BP's waiver of it's RO, DLR shall promptly deliver a true and complete copy of the Offer to SouthHall along with a written summary of any other term or condition relating to the Offer. SouthHall shall have the exclusive right and option, for a period of seven (7) business days after receipt of the Offer, to notify DLR that it will fulfill the terms of the Offer and purchase the Property. Upon SouthHall's giving notice to DLR that South Hall wishes to fulfill the terms of the Offer, both DLR and SouthHall shall be obligated to perform the terms and conditions of the Offer as a binding contract of sale. Any such acquisition by SouthHall shall continue to be subject to the RO according to the term of the RO. In the event BP exercises it's rights under the RO and purchases the Property, the Right of Second Refusal granted herein to SouthHall shall be null and void.

(b) FAILURE TO ACCEPT: If SouthHall notifies DLR that it will not fulfill the terms of the Offer, or if SouthHall fails to notify DLR that it will fulfill the terms of the Offer within the time prescribed above, DLR shall be free to sell the Property upon the terms and conditions stated in the Offer, and all rights granted under this paragraph to SouthHall shall lapse, except as provided below; provided however, that the terms of this Agreement, other than this section, shall remain in full force and effect.

(c) RE-OFFER: If DLR fails to consummate the sale of the Property within one hundred twenty (120) days after SouthHall notifies DLR that it will not fulfill the terms of the Offer, or is deemed to have done so, DLR shall be obligated to again comply with the procedures of this paragraph before consummating any sale of the Property, whether pursuant to the terms of the Offer or any subsequent or amended offer or counter-offer.

(d) EXCLUSIONS: This Right of Second Refusal shall be perpetual and shall run with the land, but shall not apply to (i) internal restructuring or a merger of DLR, or (ii) a sale of the Property to a purchaser who purchases more than one (1) Goo Goo car wash owned by DLR, or its commonly controlled entity, provided, DLR furnishes documents necessary to comply with this subsection (ii).

9. DLR hereby grants to SouthHall a perpetual exclusive easement (herein referred to as the "Sign Easement") on the Property for the maintenance, upkeep, repair and replacement and/or installation of SouthHall's sign (and/or SouthHall's designee), and electrical power to the sign, in the location of the present sign. Any replacement sign shall not exceed the elevation of current sign and shall be constructed as approved by the appropriate governmental authorities. Any mortgage granted by DLR to its lender shall be subject to this Sign Easement. In the event either party desires to legally describe the

Sign Easement, and memorialize the sign easement in recordable form, each party agrees to cooperate with the other in so doing.

10. In the event DLR is able to secure an easement from the owner of the property located westerly of the Property in order to access Inverness Center Drive, then (a) such easement shall be restricted for egress only from Dewberry Drive to Inverness Center Drive and (b) DLR and SouthHall shall enter into an agreement at the time of obtaining the easement, which agreement will be mutually acceptable to both parties, which agreement will provide that SouthHall will contribute a portion of real property that is required or is necessary in order to construct the roadway on such acquired easement, and DLR and SouthHall shall contribute equally to the construction costs and maintenance costs of such acquired easement.
11. DLR shall maintain a comprehensive general liability policy with respect to the Property and the improvements located thereon, with coverage limits at least Three Million and no/100 Dollars (\$3,000,000.00) combined single limit as to personal injury or wrongful death and any occurrence as to property damage, and the obligation to maintain the policy shall begin on the date of this Agreement. If allowed by its insurer, DLR shall name SouthHall and the IDB as an additional insured on the policy and shall provide certificate of insurance complying with this provisions.
12. The terms of this Agreement shall constitute covenants running with the land and shall inure to the benefit and be binding upon the parties hereto, and their respective successors and assigns.
13. None of the terms or provisions of this Agreement shall be deemed to create a partnership between the parties hereto in their respective businesses or otherwise, not shall it cause them to be considered joint venturers or members of any joint enterprise. Each party shall be considered a separate owner, and no party shall have the right to act as an agent for another party, unless expressly authorized to do so herein or by separate written instrument signed by the party to be charged.
14. Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any person by judgment or court order shall in a no way effect any of the other provisions hereof or the application thereof to any other person and the same shall remain in full force and effect.
15. This Agreement may be amended by, and only by, a written agreement signed by all of the then current parties and shall be effective only when recorded in the Shelby County Probate Office. No consent to the amendment of this Agreement shall ever be required of any person other than the parties, nor shall any person other than the owner have any right to enforce any of the provisions hereof.

16. The captions preceding the text of each article and section are included only for convenience of reference. Captions shall be disregarded in the construction and interpretation of the Agreement.
17. Any notice or other instrument required or permitted to be given or delivered under the terms of this Agreement shall be deemed to have been given and delivered, upon receipt, when deposited in the United States mail, postage prepaid, certified or registered, return receipt requested, addressed as follows:

IF TO DLR: DLR Associates, LLC
6021 Coca Cola Blvd.
Columbus, GA 31909

With a Copy to: James F. Burford, III
1318 Alford Avenue
Suite 101
Birmingham, AL 35216

IF TO SOUTHHALL: SouthHall of Hoover, LLC
4752 US Highway 280 East
Birmingham, AL 35242
Attn: John G. Beard

With a Copy to: Claude McCain Moncus
Corley Moncus, P.C.
400 Shades Creek Parkway
Suite 100
Birmingham, AL 35209

IF TO THE IDB: The Industrial Development Board of the City of Vincent
C/O Hewitt L. Conwill, Attorney at Law
106 Main Street
Columbiana, Alabama 35051

Such notices may also be sent: **(a)** by overnight delivery using a nationally recognized overnight courier, in which case notice shall be effective upon receipt, or **(b)** by personal delivery, in which case notice shall be deemed delivered upon receipt. A party's address may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice.

18. It is expressly agreed that no breach of this Agreement shall **(i)** entitle any Party to cancel, rescind or, otherwise terminate this Agreement or **(ii)** defeat or render invalid the lien of any mortgage made in good faith and for value. However, such limitation shall

not affect in any manner any rights or remedies which a party may be hereunder by reason of any such breach.

19. Time is of the essence of this Agreement.
20. The failure of any party to insist upon strict performance of any of the terms, covenants or conditions hereof shall be deemed a waiver of any rights or remedies which that party may have hereunder or at law or equity and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions.
21. This Agreement shall be governed, construed, applied and enforced in accordance with the laws of the State of Alabama. The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments thereto.
22. This Agreement set forth the entire understanding and agreement of DLR, the IDB and SouthHall and all courses of dealing, usage of trade and all prior representations, promises, understandings and agreements, whether oral or written, are suspended by and merged into this Agreement. No modification or amendment of this Agreement shall be binding upon DLR, the IDB and SouthHall, or any of them, unless in writing and fully executed.
23. If any party institutes any litigation to enforce any of the terms, covenants, conditions, easements and restrictions set out in this Agreement, the prevailing party in such litigation shall be entitled to collect court costs and reasonable attorney's fees from the non prevailing party.
24. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which, taken together, shall constitute one and the same agreement.
25. This Agreement and the rights, obligations, and liabilities created hereby shall be perpetual to the extent permitted by law.
26. SouthHall, may at its election, subdivide its property, and DLR agrees to cooperate with SouthHall in the subdivision approvals and subdivision plat, including but not limited to execution (or joinder) of the subdivision plat, and SouthHall further reserves the right to dedicate Dewberry Drive, and DLR agrees to cooperate with SouthHall in the dedication of Dewberry Drive, including but not limited to modification of the ingress and egress easement, so long as DLR's access rights to the Property from Dewberry Drive are not disturbed and so long as none of the Property is required for any such dedication. Absent the dedication of Dewberry Drive, at SouthHall's sole election, the agreements herein contained are for the benefit of the parties hereto and shall be construed only as creating

private rights and not creating any rights in the public or any other person, firm or corporation, except persons, firms or corporations already having such rights and the parties hereto, their successors, assigns, customers and invitees.

27. Regions Bank has executed this agreement in order to indicate that the mortgage it holds on the real property of SouthHall, is hereby subject and subordinate to this Agreement.
28. DLR hereby agrees to construct a retaining wall in compliance with plans and specifications prepared and stamped by a licensed engineer in the State of Alabama (the "Retaining Wall"), all of which shall be in compliance with all applicable federal, state and local laws, statutes, ordinances, building codes, and regulations and DLR will pay all costs associated with this work. The face of the of the Retaining Wall shall be at least five (5) from the edge of the existing pavement of Dewberry Drive. After completion of the Retaining Wall, DLR will be responsible for maintenance, upkeep and repair of the Retaining Wall. If required, DLR will install such safety barriers along Dewberry Drive to assure the safety and welfare of automobiles, trucks, and other vehicles using Dewberry Drive. If DLR fails to maintain, upkeep and repair the Retaining Wall, or fails to install safety barriers, as may be required, South Hall shall have the right, but not the obligation, to perform maintenance, upkeep or repairs, or install safety barriers, or cause to perform maintenance, upkeep or repairs to the Retaining Wall, or cause to be installed such safety barriers, and DLR agrees and covenants to reimburse South Hall for any and all costs associated with such maintenance, upkeep or repairs, or installation of safety barriers. DLR will reimburse South Hall within thirty days of receipt of a written invoice delivered to DLR.
29. DLR agrees that DLR is solely responsible for the safety and protection of all persons and property from any and all bodily injury or property damage associated with the construction, upkeep and maintenance of the Retaining Wall, and the location of the Retaining Wall and DLR indemnifies South Hall for any and all claims, lawsuits, liens, damages, and associated attorney's fees incurred by South Hall or its insurers as a result of DLR or its agent's activities in constructing or maintaining the Retaining Wall.
30. DLR as the purchaser of the Property, and the owner of the Property, hereby relinquishes any right, title or interest it may acquire in fee simple property which is located in Dewberry Drive and covenants and agrees, upon the request of South Hall, to execute in recordable form, a quit claim deed, evidencing such release of any claim of fee simple title of DLR's property in Dewberry Drive. This conveyance shall never be construed as denying access rights to the Property. Further, in conjunction with any such conveyance, South Hall shall comply with all applicable subdivision regulations.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed effective as of the day and year first above written.

[SIGNATURES ON FOLLOWING PAGES]

COUNTERPART SIGNATURE PAGE TO AGREEMENT BETWEEN DLR ASSOCIATES,
LLC, THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF VINCENT,
REGIONS BANK AND SOUTHHALL OF HOOVER, LLC

DLR:

**DLR ASSOCIATES, LLC, a Georgia limited
liability company**

By: *Roger Lamar Beck Sr.* [SEAL]
O. MGR.

STATE OF AL)
)
Lee COUNTY)

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby
certify that *ROGER LAMAR BECK SR.* whose name as *OPERATING MANAGER* of
DLR ASSOCIATES, LLC, a Georgia limited liability company, is signed to the foregoing
Agreement and who is known to me, acknowledged before me on this day that, being informed
of the contents of the Agreement, he, in his capacity as such *O. MGR.* and with full
authority, executed the same voluntarily for and as the act of said limited liability company on
the day the same bears date.

Given under my hand this the *2* day of *MAY* ~~January~~, 2005.

[NOTARIAL SEAL]

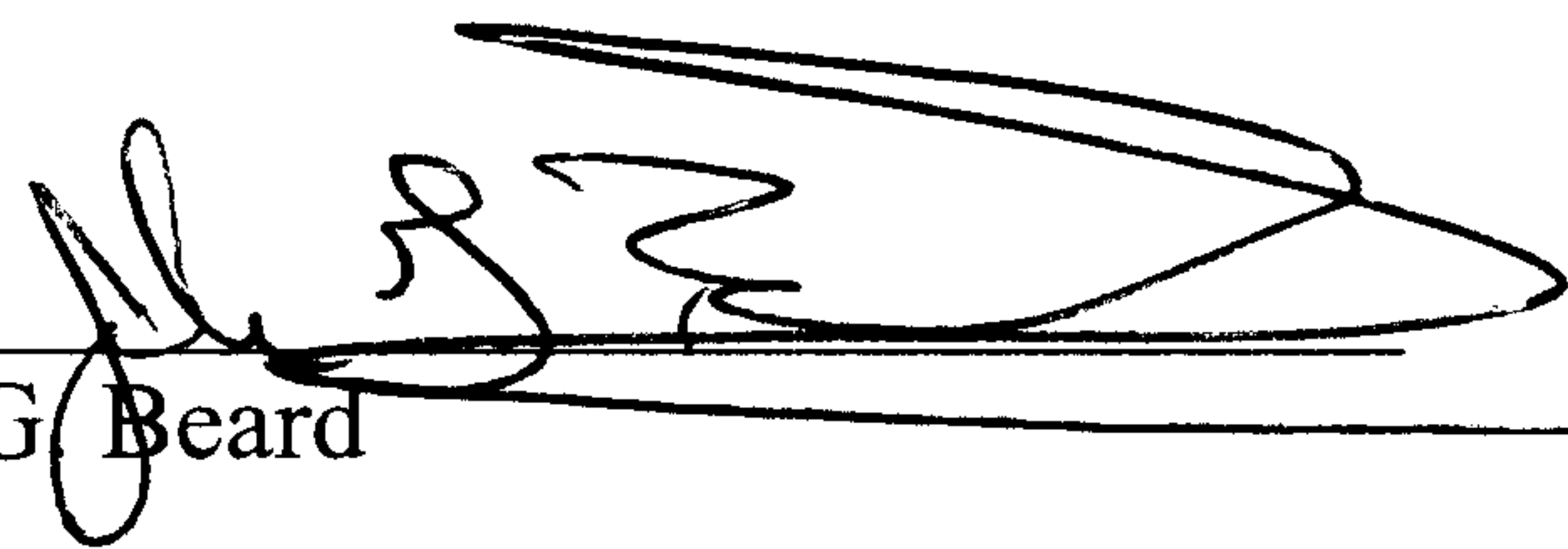
Notary Public: *[Signature]*

My Commission Expires: *3-1-06*

COUNTERPART SIGNATURE PAGE TO AGREEMENT BETWEEN DLR ASSOCIATES,
LLC, THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF VINCENT,
REGIONS BANK AND SOUTHHALL OF HOOVER, LLC

SOUTHHALL:

**SOUTHHALL OF HOOVER, LLC, an
Alabama limited liability company**

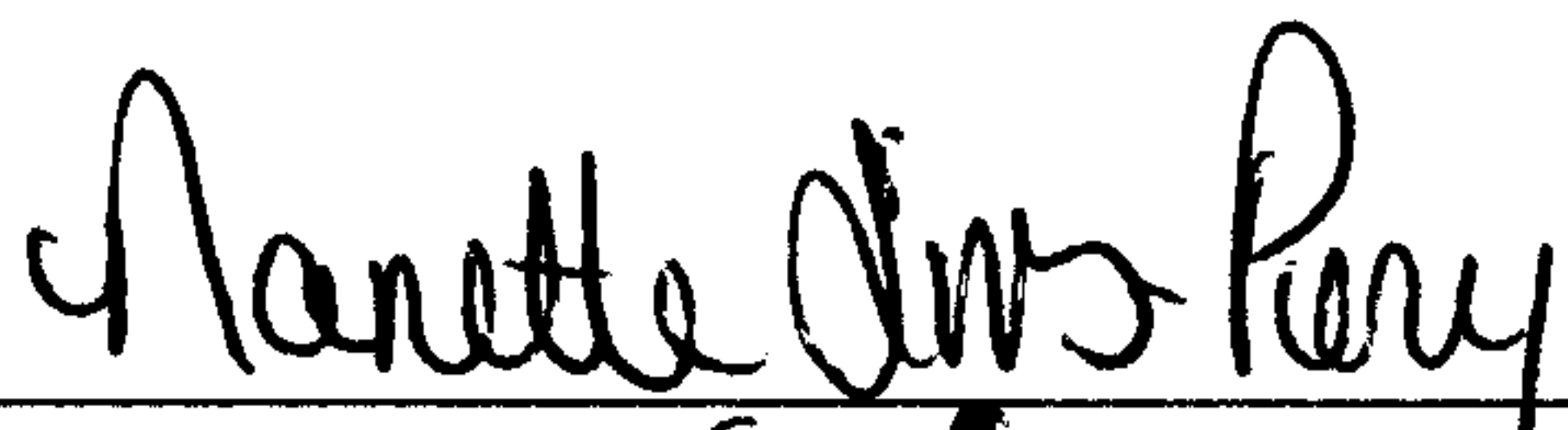
By: 
Name: John G. Beard
Its: Manager

STATE OF ALABAMA)
)
JEFFERSON COUNTY)

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that **JOHN G. BEARD**, whose name as Manager of **SOUTHHALL OF HOOVER, LLC**, an Alabama limited liability company, is signed to the foregoing Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of the Agreement, he, in his capacity as such Manager and with full authority, executed the same voluntarily for and as the act of said limited liability company on the day the same bears date.

Given under my hand this the 22nd day of February, 2005.

[NOTARIAL SEAL]

Notary Public: 
My Commission Expires: 9-26-2007

MY COMMISSION EXPIRES SEPTEMBER 26, 2007

COUNTERPART SIGNATURE PAGE TO AGREEMENT BETWEEN DLR ASSOCIATES,
LLC, THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF VINCENT,
REGIONS BANK AND SOUTHHALL OF HOOVER, LLC

IDB:

THE INDUSTRIAL DEVELOPMENT
BOARD OF THE CITY OF VINCENT

By: *Hewitt L. Conwill*
Name: Hewitt L. Conwill
Its: Secretary-Treasurer

STATE OF ALABAMA)
)
SHELBY COUNTY)

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Hewitt L. Conwill, whose name as Secretary-Treasurer of **THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF VINCENT**, is signed to the foregoing Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of the Agreement, he, in his capacity as such officer and with full authority, executed the same voluntarily for and as the act of said Board on the day the same bears date.

Given under my hand this the 21st day of February, 2005.

[NCTARIAL SEAL]

Notary Public: *Timothy D. Johnson*
My Commission Expires: 11/14/08



20050504000212340 12/12 \$47.00
Shelby Cnty Judge of Probate, AL
05/04/2005 08:20:17AM FILED/CERT

COUNTERPART SIGNATURE PAGE TO AGREEMENT BETWEEN DLR ASSOCIATES,
LLC, THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF VINCENT,
REGIONS BANK AND SOUTHHALL OF HOOVER, LLC

REGIONS BANK

By: 
Name: Mark Taylor
Its: Vice President

STATE OF ALABAMA)
)
JEFFERSON COUNTY)

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that MARK TAYLOR, whose name as Vice President of **REGIONS BANK**, is signed to the foregoing Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of the Agreement, he, in his capacity as such officer and with full authority, executed the same voluntarily for and as the act of said bank on the day the same bears date.

Given under my hand this the 28th day of April, 2005.

[NOTARIAL SEAL]

Notary Public: Angela S. Godfrey
My Commission Expires: _____

