

The entire purchase price is being secured by a purchase money mortgage being recorded simultaneously herewith.

STATE OF ALABAMA )  
COUNTY OF SHELBY )

Value -  
\$ 500.00

### SEWER EASEMENT AGREEMENT

KNOW ALL MEN BY THESE PRESENTS, that this Sewer Easement Agreement (the "Agreement") is made and entered into this 31<sup>st</sup> day of May, 2005, by and between **Foresight Development, L.L.C.**, an Alabama limited liability company with an address of Two Riverchase Office Plaza, Suite 206, Birmingham, Alabama 35244 ("Grantor") and **DGPelham, LLC**, an Alabama limited liability company with an address of 1025 15<sup>th</sup> Street, Suite B, Tuscaloosa, Alabama 35401 ("Grantee").

**WHEREAS**, Grantee is the owner of certain real property located in Pelham, Shelby County, Alabama (the "Grantee Property") as more particularly described in Exhibit A attached hereto;

**WHEREAS**, Grantor is the owner of certain real property located along the northern boundary of Grantee Property and more particularly described in Exhibit B attached hereto (the "Grantor Property");

**WHEREAS**, Grantee desires to construct, install, place, maintain and repair a sanitary sewer system within a portion of the Grantor Property in conjunction with the development and construction of the Grantee Property and Grantor is willing to allow such use on the terms and conditions stated herein.

**NOW THEREFORE**, Grantor, in consideration of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Grantor, does hereby grant, bargain, sell and convey unto the Grantee a Sewer Easement over a portion of the Grantor Property located in the County of Shelby, State of Alabama on the following terms and conditions:

1. **Sewer Easement.**

(a) Grantee, together with its successors, assigns, employees, contractors, subcontractors and agents, shall have the non-exclusive right, power and authority to enter upon and use that portion of the Grantor Property as described and shown on Exhibit C attached hereto (the "Sewer Easement Area") with such men, supplies and equipment as are necessary for the purpose of developing and constructing sanitary sewer line improvements and all necessary fixtures thereto in the Sewer Easement Area to provide sanitary sewer services to the Grantee Property. This sewer easement shall specifically include only the right to enter on the Sewer Easement Area for the purpose of facilitating said construction and installation and any subsequent maintenance or repair of the sewer line contained therein. Grantor hereby agrees to permit the removal of any trees, brush, undergrowth, other vegetation, soil, structures or



obstructions situated within the Sewer Easement Area for the purpose of constructing and maintaining the sanitary sewer line through the Sewer Easement Area; provided, however, that the disposal of any such removed items shall be conducted away from the Grantor Property and the Sewer Easement Area in a manner consistent with any applicable codes, ordinances or state laws.

(b) This easement shall be perpetual. The easement and rights herein granted shall be deemed appurtenant to and to run with the ownership of the Grantee Property.

2. **Ownership of Easement Rights and Lines.** Grantee and Grantor hereby acknowledge that ownership of the sanitary sewer line installed within the Sewer Easement Area shall be vested in Grantee. Grantee shall pay when due all tapping, impact and use fees related to Grantee's use of the sanitary sewer line as may be charged from time to time by any sewer authority or the applicable municipal, county or state government (the "Governing Authority"). Upon completion of the sanitary sewer line and its connection to lines owned and operated by any Governing Authority, Grantee may convey, grant and otherwise transfer the easement and Grantee's rights and interests in the sanitary sewer line to a Governing Authority. Grantor hereby agrees for itself and its successors and assigns to execute such documents and agreements as may be required by a Governing Authority to effectuate the transfer of the easement and sewer line.

3. **Improvements within Sewer Easement Area.** Neither the Grantor nor its transferees, grantees, successors or assigns to the Sewer Easement Area shall build or construct, or permit to be built or constructed, any building or other improvements, other than parking lots, roads or other utility services (which utility services shall not interfere with the sanitary sewer line) over or across said Sewer Easement Area, nor change the contour thereof, without the written consent of Grantee.

4. **Relocation of Sanitary Sewer Line.** Grantor, its grantees, successors or assigns (each a "Grantor Party") may, at the sole expense of the Grantor Party exercising such relocation right and at no expense to Grantee, relocate the sanitary sewer line, or a portion of such line, servicing the Grantee Property to a location wherein the Grantor Party exercising such right has the right to locate a sanitary sewer line, provided that:

- (i) the Grantor Party exercising such right shall grant an easement to Grantee for the area where such sanitary sewer line is relocated of the same width and on the same terms and conditions as provided in this Agreement;
- (ii) the relocation of such sanitary sewer line shall be conducted in such a manner as to not interrupt sanitary sewer service to the Grantee Property;
- (iii) any new location for the sanitary sewer line shall permit for the sanitary sewer line to operate by gravity; and



- (iv) the Grantor Party exercising such rights, shall by the exercise of such rights, have agreed to defend, indemnify and hold harmless Grantee, its successors and assigns and their respective agents, contractors, directors, employees and representatives from any damage, claim, loss or injury, whether suffered by or asserted against any one or more of them, from or by any party whatsoever arising from the exercise by Grantor Party of the relocation rights herein granted, including, without limitation, personal injury, loss of life, loss of or damage to real or personal property, and attorney fees and other costs of defense or litigation.

Upon completion of any such relocation, Grantee, its successor or assigns, agree to execute an instrument to abandon this Agreement with respect to the portion of the sanitary Sewer Easement Area from which the sanitary sewer line has been relocated.


**5. Indemnity Agreement.** Grantee hereby agrees to defend, indemnify and hold harmless Grantor and its agents, contractors, directors, employees and representatives from any damage, claim, loss or injury, whether suffered by or asserted against any one or more of them, from or by any party whatsoever arising from (i) the exercise by Grantee of the easement rights herein granted, (ii) the entry upon the Grantor Property or any portion thereof by Grantee or any party acting on behalf of Grantee in constructing or maintaining the sanitary sewer line, or (iii) any use, repair or maintenance of the Sewer Easement Area, by Grantee, its employees, contractors or agents, or any other party acting on behalf of Grantee, including, without limitation, personal injury, loss of life, loss of or damage to real or personal property, and attorney fees and other costs of defense or litigation.

**6. Temporary Construction Easement.** Grantee shall have the temporary, non-exclusive right to enter and cross that portion of Grantor Property for the limited purpose of transporting workers, supplies and equipment as necessary for the performance of the work within the Sewer Easement Area as permitted pursuant to this Agreement. Upon the completion of all such work, this temporary, non-exclusive easement shall terminate.

**7. Notices.** All notices required or permitted hereunder shall be in writing and shall be served on all of the parties hereto at the following addresses:

If to Grantor: Foresight Development, L.L.C.  
3477 Indian Lake Way  
Pelham, Alabama 35124  
Attention: Mr. Paul Spina

If to Grantee: DGPelham, LLC  
1025 15<sup>th</sup> Street, Suite B  
Tuscaloosa, Alabama 35401  
Attention: Mr. Robert Buchalter

  
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Shelby Cnty Judge of Probate, AL  
06/03/2005 04:11:58PM FILED/CERT



With a copy to: Stephen P. Leara, Esq.  
Wallace, Jordan, Ratliff & Brandt, L.L.C.  
800 Shades Creek Parkway, Suite 400  
Birmingham, Alabama 35209

Any such notices shall be deemed to be sufficiently given or served upon any party hereto when either (i) sent by personal delivery to the address set forth above, (ii) deposited in the United States mail by registered or certified mail, return receipt requested, postage prepaid and addressed as provided above or (iii) deposited with a nationally recognized overnight delivery courier service for next day delivery and addressed as set forth above. The above addresses may be changed by written notice to the other parties given in the manner set forth above.


8. **Binding Effect.** The terms and provisions of this instrument shall be binding upon and inure to the benefit of the undersigned parties and their respective successors and assigns.

9. **Amendments.** No amendment, modification or cancellation of this Agreement shall be valid unless in writing and signed by the party against whom enforcement is sought.

10. **Headings.** Headings are for convenience or reference only and shall not affect meanings or interpretations of the contents of this Agreement.

11. **Run with the Land.** The provisions of this Agreement shall bind and run with the land.

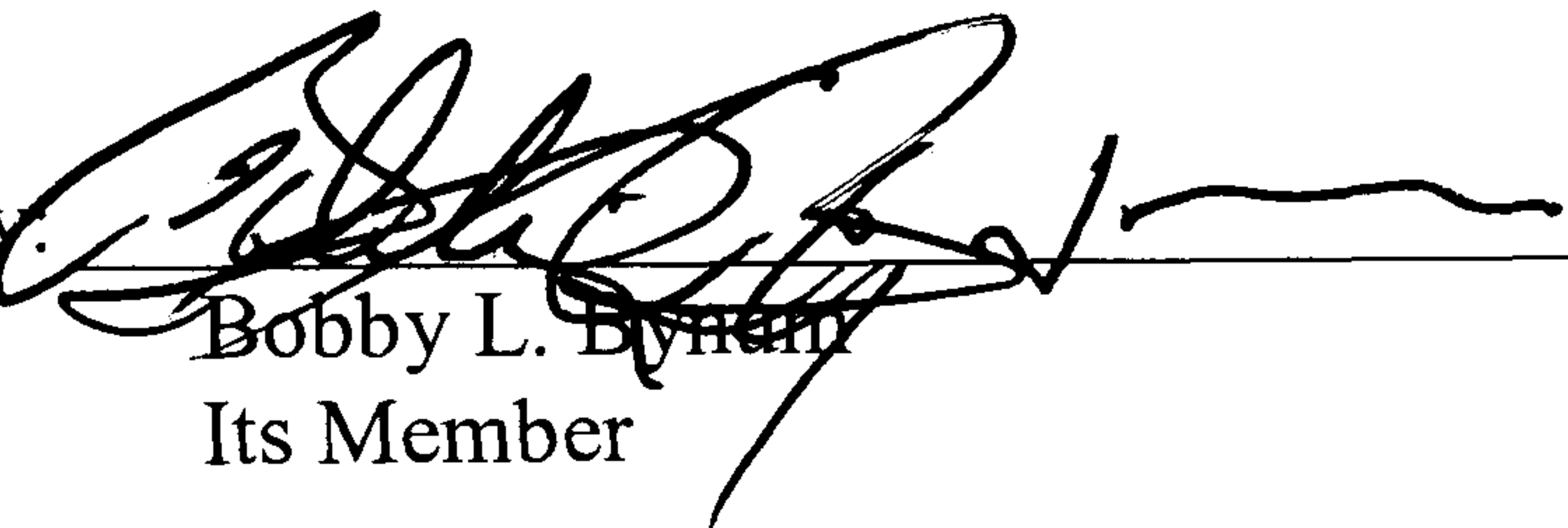
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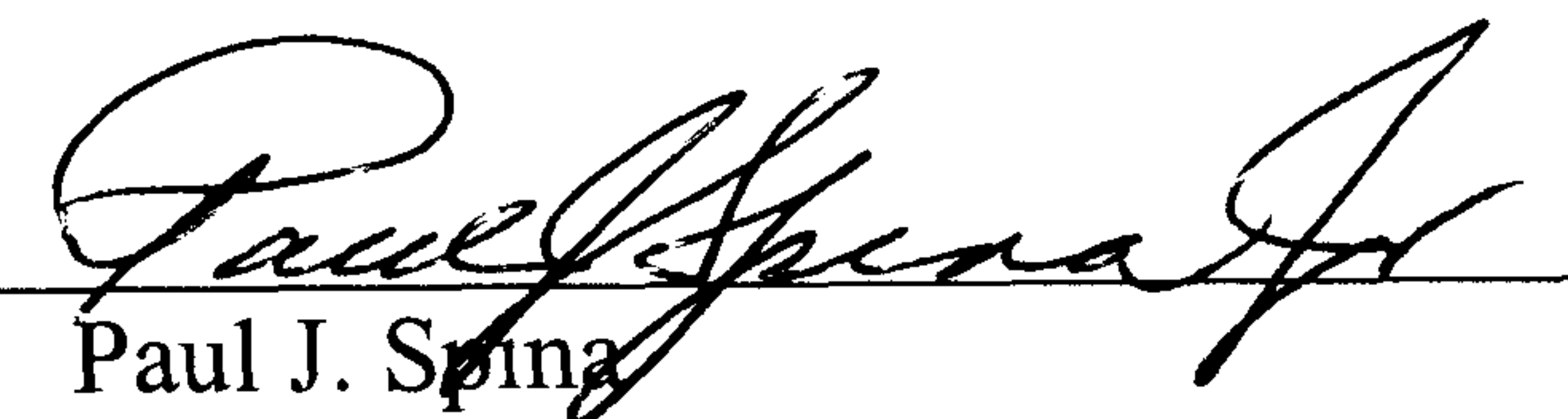
IN WITNESS WHEREOF, Grantor and Grantee have entered into this Agreement as of the day and year first written above.

**GRANTOR:**

**Foresight Development, LLC,**  
an Alabama limited liability company

By:   
Bobby L. Bynum  
Its Member

And

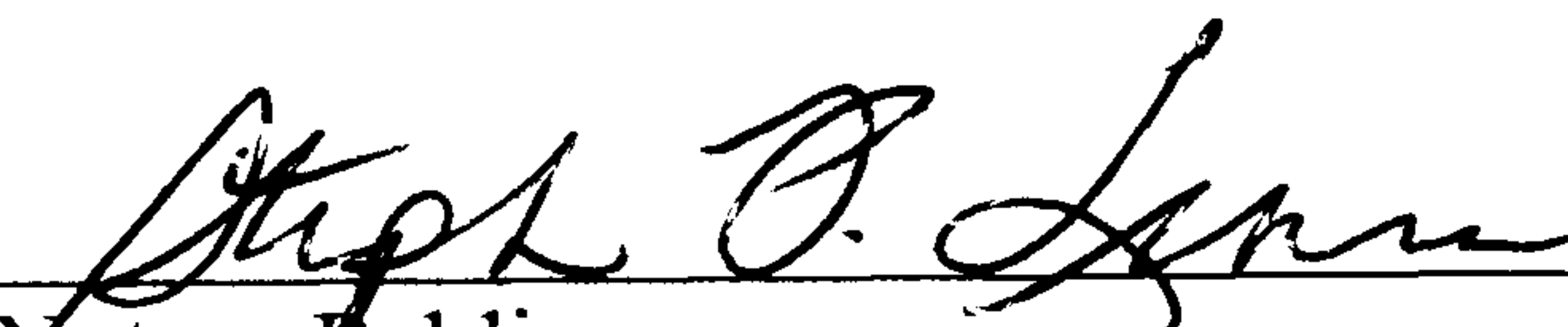
By:   
Paul J. Spina  
Its Member

STATE OF ALABAMA     )


COUNTY OF JEFFERSON   )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Bobby L. Bynum and Paul J. Spina, whose name as Members of Foresight Development, LLC, an Alabama limited liability company, are signed to the foregoing Sewer Easement Agreement, and who are known to me, acknowledged before me on this day, that being informed of the contents thereof, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and official seal, this the 31<sup>st</sup> day of May, 2005.

  
Notary Public

My Commission Expires: 2-6-06

  
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06/03/2005 04:11:58PM FILED/CERT



**GRANTEE:**

**DGPelham, LLC,**  
an Alabama limited liability company

By:   
Robert Buchalter  
Its Manager

STATE OF ALABAMA     )


COUNTY OF Jefferson     )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Robert Buchalter, whose name as Manager of DGPelham, LLC, an Alabama limited liability company, is signed to the foregoing Sewer Easement Agreement, and who is known to me, acknowledged before me on this day, that being informed of the contents thereof, each, as such officer and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and official seal, this the 31<sup>st</sup> day of May, 2005.

  
Notary Public


My Commission Expires: 2-6-06

  
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## **EXHIBIT A**

### **GRANTEE PROPERTY DESCRIPTION**


Lot 2, according to Dollar General's Addition to Pelham, as recorded in Map Book 34, Page 119, in the Probate Office of Shelby County, Alabama.

  
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## **EXHIBIT B**

### **GRANTOR PROPERTY DESCRIPTION**

Lot 1, according to Dollar General's Addition to Pelham, as recorded in Map Book 34, Page 119, in the Probate Office of Shelby County, Alabama.

  
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## EXHIBIT C-1

### SEWER EASEMENT AREA DESCRIPTION

#### 10' SANITARY SEWER EASEMENT SHELBY COUNTY, ALABAMA

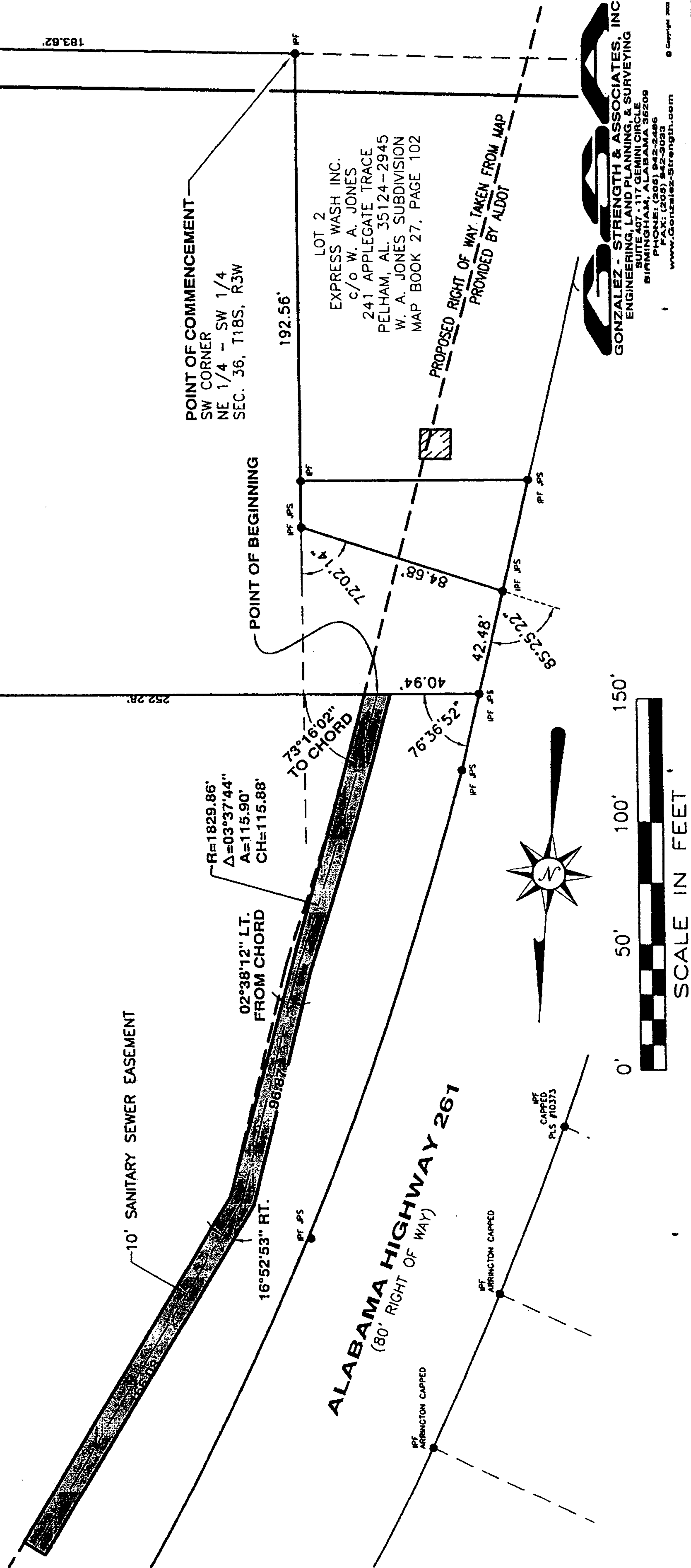
A parcel of land situated in part of the Northeast one-quarter of the Southwest one-quarter and the Northwest one-quarter of the Southwest one-quarter of Section 36, Township 18 South, Range 3 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Southwest corner of the Northeast one-quarter of the Southwest one-quarter of said Section and run in a Northerly direction along the East line for a distance of 192.56 feet; thence turn a deflection angle of 72 degrees 02 minutes 14 seconds to the left and run in a Northwesterly direction for a distance of 84.68 feet to a point on the Easternmost right of way line of Alabama Highway 261 (80' right of way); thence turn a deflection angle of 85 degrees 25 minutes 22 seconds to the right and run in a Northeasterly direction along said right of way for a distance of 42.48 feet; thence leaving said right of way, turn a deflection angle of 76 degrees 36 minutes 52 seconds to the right and run in an Easterly direction for a distance of 40.94 feet to the POINT OF BEGINNING of a centerline of a 10' sanitary sewer easement, lying 5' parallel, abutting to and adjacent to said centerline and the point of beginning of a curve to the right, said curve having a radius of 1829.86 feet, a central angle of 03 degrees 37 minutes 44 seconds, a deflection angle of 73 degrees 16 minutes 02 seconds to the left to chord for a chord distance of 115.88 feet; thence run along arc of said curve for a distance of 115.90 feet; thence turn a deflection angle of 02 degrees 38 minutes 12 seconds to the left and run in a Northeasterly direction for a distance of 96.87 feet; thence turn a deflection angle of 16 degrees 52 minutes 53 seconds to the right and run in a Northeasterly direction for a distance of 166.08 feet to the end of said centerline herein described.

  
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## EXHIBIT MAP

## MITOBA TRAIL



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