

**ASSIGNMENT AND CONVEYANCE  
WITH DEVELOPMENT AGREEMENTS AND RESTRICTIVE  
COVENANTS**

**THE STATE OF ALABAMA**

§

**KNOW ALL MEN BY THESE PRESENTS:**

**COUNTY OF SHELBY**

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Whereas, Pursuant to that certain Option Agreement and Earnest Money Contract dated April 20, 1998 (as heretofore amended, hereinafter called the "Option Contract"), **CAHABA LAND ASSOCIATES, LLC**, a Texas limited liability company ("**Assignor**"), whose address is 5718 Westheimer, Suite 2100, Houston, TX 77057 holds an option to purchase that certain tract of land containing approximately 39.755 acres of land located in Shelby County, Alabama, and being more particularly described on Exhibit "A" attached hereto and incorporated herein by reference, together with any and all improvements thereon and all rights and interests appurtenant thereto (hereinafter referred to as the "**Property**").

NOW THEREFORE, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) cash and other good and valuable consideration given to Grantor, including specifically without limitation, the imposition by Grantee upon the Property of the development agreements and restrictive covenants hereinafter contained and described, the receipt and sufficiency of which is hereby expressly acknowledged and confessed, Grantor has **GRANTED, BARGAINED, SOLD, and CONVEYED**, and by these presents does **GRANT, BARGAIN, SELL, and CONVEY** unto **CAHABA BEACH INVESTMENTS LLC**, an Alabama limited liability company ("**Grantee**") all of Grantor's right, title and interest in and to the Option Contract.

This conveyance is made by Grantor and accepted by Grantee subject to (i) any and all restrictions, covenants, conditions, liens, encumbrances, reservations, easements and all other matters and exceptions of record, (ii) the terms, provisions and conditions of this Assignment and Conveyance, including without limitation, the development agreements and restrictive covenants hereinafter contained and described, (iii) all municipal or other governmental zoning laws, regulations and ordinances, if any, affecting the Property, and (iv) all matters which would be revealed by a physical inspection and/or current survey of the Property.

**DEVELOPMENT AGREEMENTS AND RESTRICTIVE COVENANTS**

Automatically upon Grantee being vested with title to the Property, and without any further action, consent, documentation or action of any person or party, the following development agreements and restrictions will be imposed upon the Property to the same extent and with same force and effect as if they were contained in the deed vesting title to the Property in Grantee and will be covenants burdening, encumbering and running with the Property and

Cahaba Title, Inc.



are NOT only personal to Grantee (however, Grantee will not be released of or from the following upon sale or other conveyance of any portion of the Property):

1. Grantee agrees to develop the Property substantially and materially in accordance with the site plan approved by Shelby County, Alabama attached hereto as Exhibit "C" and made a part hereof, and concurrent with any development of, clearing of, building on or other improvement of the Property, Grantee further agrees, at its sole cost and expense, that it will establish and maintain a natural buffer on the Property (the "**Buffer Area**") in which (i) no trees, shrubs or other flora or fauna will be removed, (ii) the natural topography will not be altered and (iii) the land will not be graded. The Buffer Area is that portion of the Property between the entire westerly boundary line of the Property (being the entire boundary line between the Property and the Kenley Tract, as defined below, and hereinafter called the "**Boundary Line**") and the "Clearing Limits" line depicted on the site map attached hereto as Exhibit "D" and made a part hereof for all purposes. Grantee further agrees to construct build and maintain, at its sole cost and expense, a secure fence along the Boundary Line similar in material, height, etc. to the fencing located at the entry gate to the apartment community known as Kenley, which apartment community is located on the tract of land located west of the Property and which is more particularly described on Exhibit "B" attached hereto and incorporated herein (the "**Kenley Tract**"), or other fencing approved in advance by the Kenley Owner (as hereinafter defined), for the purpose of dividing the Property and the Kenley Tract. Grantee acknowledges and agrees that the foregoing restrictions, representations and agreements require that Grantee preserve, protect and maintain all existing trees and other substantial vegetation located wholly or in part within the Buffer Area as they exist on the effective date hereof and Grantee further acknowledges and agrees that no grading will be performed in the Buffer Area and that any grading performed outside the Buffer Area will be performed so as to not materially vertically increase the level of the Property on which buildings, improvements or other structures will be constructed, provided however, Grantor acknowledges and agrees that Grantee may need to fill in and thus increase the level of the Property in specific depressed locations outside of the Buffer Area to enable the pouring of level concrete building slabs.

WITHOUT LIMITING ANYTHING CONTAINED OR IMPLIED HEREIN, GRANTEE EXPRESSLY ACKNOWLEDGES AND AGREES THAT IT IS GRANTOR'S EXPRESS INTENTION AND UNDERSTANDING THAT THE NATURAL TOPOGRAPHY AND MATERIAL VEGETATION (INCLUDING ALL TREES) OF AND IN THE BUFFER AREA ON THE EFFECTIVE DATE HEREOF REMAIN IN THE SAME CONDITION AS IT AND THEY EXIST ON THE EFFECTIVE DATE HEREOF SO AS TO CREATE A PHYSICAL AND VISUAL NATURAL BARRIER BETWEEN THE KENLEY TRACT AND THE PROPERTY, AND BUT FOR GRANTEE'S AGREEMENT TO COMPLY WITH GRANTOR'S EXPRESS INTENTION AND UNDERSTANDING, GRANTOR WOULD NOT CONVEY THE PROPERTY TO GRANTEE.



2. A building, structure and improvement set-back area in the area between the entire Boundary Line and the "Setback Line" as shown on the site map attached hereto as Exhibit "D" is hereby created and imposed upon the Property (the "**Setback Area**"). No buildings, structures, paving or other improvements of any type or character can be built, placed or otherwise located in the Setback Area except for the fence described in Paragraph 1 above.
3. Subject to the further restrictions provided hereinafter, Grantee represents and agrees that it will only develop and construct higher-end condominium single family structures on the Property including, but not limited to, attached and detached garden homes and townhouses, with actual selling prices starting at \$185,000.00 per dwelling unit and Grantee agrees not to develop or construct any type of commercial and/or multifamily rental dwelling product (including without limitation, apartments) on the Property. NOTWITHSTANDING THE FOREGOING, Grantee understands and agrees that the foregoing representation and agreement is further subject to the following: (i) at least fifty percent (50%) of such fee simple single family condominium dwelling units must have an actual selling price of \$225,000.00 or above per dwelling unit, and (ii) Grantee must use its best efforts to situate fee simple single family condominium dwelling units having an actual selling price of \$225,000.00 or greater per dwelling unit along the Boundary Line (subject to the Buffer Area and the Setback Area). Further and without limiting the foregoing, any cleared and/or otherwise disturbed land or dirt which is visible from the Kenley Tract and/or from any improvements thereon (including third floor windows and balconies) must be hydroseeded.
4. Development on the Property is hereby further restricted to those uses that would not cause undue noise, odors or disturbance, and/or negatively impact the cleanliness and/or environmental integrity and/or drainage of the area (including specifically Kenley), and/or otherwise materially negatively impact Kenley economically (such as a warehouse or other industrial use), all as reasonably determined by the Kenley Owner.
5. Grantee acknowledges and understands that it has been specifically advised by Grantor that Grantor is especially concerned about drainage and water run off from the Property to and onto the Kenley Tract, and without limiting anything contained or implied herein to the contrary, Grantee understands and agrees that Grantor must be satisfied as to the scope and extent of all drainage plans for any development on and of the Property and must continue to be satisfied after the Property is developed. Therefore, in the event Grantor is dissatisfied, in the exercise of its reasonable judgment, with the actual drainage and/or water run off from the Property to and/or on the Kenley Tract after development of the Property, Grantee will, at its sole cost and expense, correct and/or alter such drainage and/or run off by whatever means deemed reasonably necessary by Grantor, including without limitation, additional grading, installing of drainage collector boxes and pipes and/or removing and reinstalling existing pipes with different slopes to route excess water to an appropriately sized waste water systems or Lake Dixie as appropriate.



Without limiting the foregoing (including Grantor's right to require further corrective efforts of Grantee after development of the Property, which Grantee expressly understands and agrees may be required on the Kenley Tract as well as the Property), Grantee acknowledges that (a) the "Water Retention Area" located in the southwest corner of the Property and the corresponding southeast corner of the Kenley Tract (generally as depicted on the site map attached Exhibit "D") needs correction so that water will drain appropriately out of such retention area, and therefore Grantee, at its sole cost and expense, will correct same in the manner described on Exhibit "E" attached hereto and made a part hereof for all purposes.

IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT GRANTOR HAS NOT AT ANY TIME MADE ANY WARRANTIES, PROMISES, AGREEMENTS OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY OR THE OPTION CONTRACT, AND EXCEPT FOR ANY WARRANTY EXPRESSLY SET FORTH HEREIN, GRANTOR IS NOT MAKING ANY SUCH WARRANTIES, PROMISES, AGREEMENTS OR REPRESENTATIONS, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES, PROMISES, AGREEMENTS OR REPRESENTATIONS AS TO HABITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ENVIRONMENTAL OR ECONOMIC CONDITION, VALUE, POTENTIAL FOR PROFIT, ABILITY FOR DEVELOPMENT OR OTHERWISE. GRANTEE ACKNOWLEDGES AND AGREES THAT THE CONVEYANCE OF THE OPTION CONTRACT IS BEING MADE BY GRANTOR AND IS ACCEPTED BY GRANTEE "AS IS, WHERE IS, WITH ALL FAULTS", GRANTEE FURTHER ACKNOWLEDGES AND AGREES THAT IT HAS NOT RELIED ON AND WILL NOT RELY ON, AND GRANTOR IS NOT LIABLE FOR OR BOUND BY, ANY EXPRESS OR IMPLIED WARRANTIES, GUARANTIES, STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY OR OPTION CONTRACT OR RELATING THERETO MADE OR FURNISHED BY ANY PERSON OR PARTY, OR ANY REAL ESTATE BROKER OR AGENT REPRESENTING OR PURPORTING TO REPRESENT GRANTOR, TO WHOMEVER MADE OR GIVEN, DIRECTLY OR INDIRECTLY AND WHETHER ORALLY OR IN WRITING, AND GRANTEE REPRESENTS AND WARRANTS THAT IS HAS THE SKILL, KNOWLEDGE AND BUSINESS ACUMEN TO DETERMINE WHETHER THE PROPERTY IS SUITABLE FOR ITS PURPOSES.

Grantee will be liable for any rollback or other taxes imposed after the effective date hereof (even if attributable to periods before the effective date hereof) which accrue or are assessed due to Grantee's purchase of the Property and/or Grantee's change of the Property's use.

Grantee expressly acknowledges and agrees that it will not attempt to amend, alter, remove or otherwise hinder or impair the development agreements and restrictive covenants described above and but for the imposition of such development agreements and restrictive covenants on the Property and their being valid and remaining in full force and effect against the Property to the same extent and with same force and effect as if they were contained in the deed vesting title to the Property in Grantee, Grantor would not grant, sell and convey the Option Contract to Grantee.



Grantee further acknowledges and agrees that the per diem credit provided for in the Ninth Amendment to the Option Contract with respect to the Quarterly Extension Payment paid on October 1, 2005 (as defined in such Ninth Amendment) will accrue to the benefit of Grantor.

This Assignment and Conveyance and all of the terms, provisions, conditions, rights, approvals and obligations herein are binding upon and will inure to the benefit of Grantor and Grantee and their respective successors and assigns.

**TO HAVE AND TO HOLD**, subject as aforesaid, the Option Contract together with all and singular the rights and appurtenances thereto in anywise belonging unto Grantee, and its successors and assigns forever.

**WITNESS THE EXECUTION HEREOF** effective as of the \_\_\_\_ day of October 2005.

**SIGNATURES ON NEXT PAGE**

"GRANTOR"

CAHABA LAND ASSOCIATES, LLC, a Texas  
limited liability company

By: \_\_\_\_\_

Alan E. Ferris, President

"GRANTEE"

CAHABA BEACH INVESTMENTS LLC, an  
Alabama limited liability company

By: \_\_\_\_\_

Printed Name: Jonathan M. Belcher

Title: \_\_\_\_\_

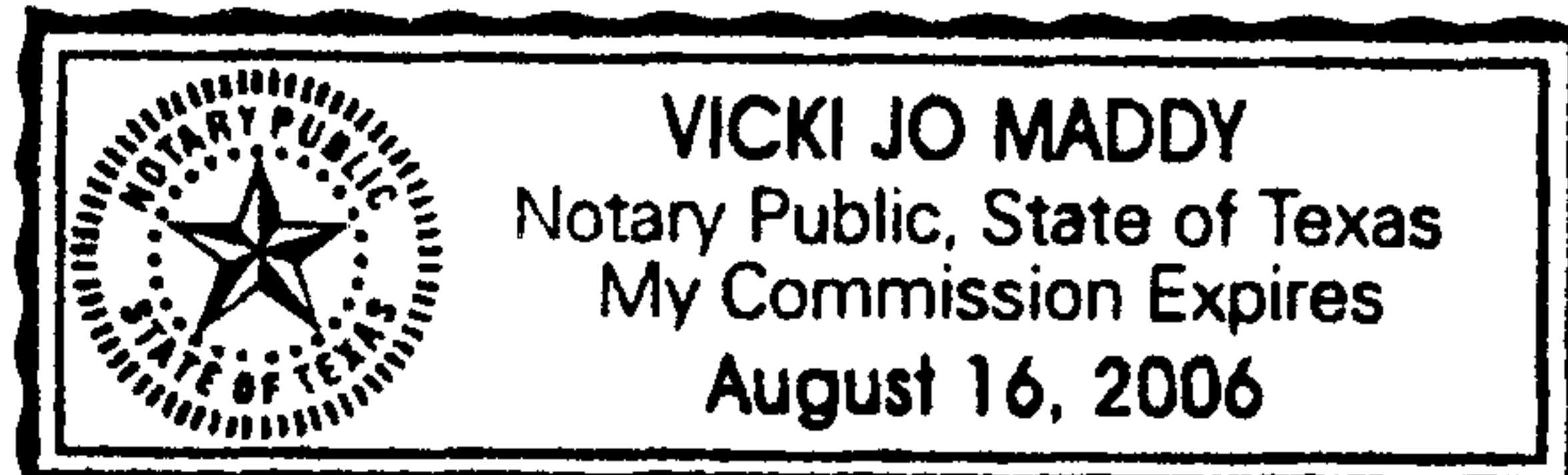
Vice President

THE STATE OF TEXAS   §  
                                     §  
COUNTY OF HARRIS   §

This instrument was acknowledged before me on the 12<sup>th</sup> day of October, 2005,  
by Alan E. Ferris, President of Cahaba Land Associates, LLC, a Texas limited liability  
company, on behalf of said limited liability company.

(Notary Seal)

Vicki Jo Maddy  
Notary Public, State of Texas



20051024000550520 7/13 \$47.00  
Shelby Cnty Judge of Probate, AL  
10/24/2005 09:33:40AM FILED/CERT

THE STATE OF ALABAMA

COUNTY OF JEFFERSON

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I, a Notary Public, in and for said County in said State, hereby certify that Sandra M. Belcher whose name as Vice President of Cahaba Beach Investments LLC, an Alabama limited liability company, is signed to the foregoing instrument or conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this the 14 day of October, 2005.

(Notary Seal)

J. C. H.  
Notary Public, State of Alabama

My Commission Expires 5/21/2008




20051024000550520 8/13 \$47.00  
Shelby Cnty Judge of Probate, AL  
10/24/2005 09:33:40AM FILED/CERT

**EXHIBIT A**  
**To Assignment and Conveyance**

**Property Description**

The SE ¼ of the SE ¼ of Section 25, Township 18 South, Range 2 West, Shelby County, Alabama, less and except that portion lying within the road and/or road right of way.



  
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Shelby Cnty Judge of Probate, AL  
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**EXHIBIT B**  
**To To Assignment and Conveyance**  
**Kenley Tract**



EXHIBIT

B

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Shelby Cnty Judge of Probate, AL  
10/24/2005 09:33:40AM FILED/CERT

LOT 1

Lot 1, KENLEY SURVEY, as recorded in Map Book 24, Page 90, in the office of the Judge of Probate of Shelby County, Alabama, being more particularly described as follows:

A parcel of land situated in the S.W. 1/4 of the S.E. 1/4 of Section 25, Township 18 South, Range 2 West and the N.W. 1/4 of the N.E. 1/4 of Section 36, Township 18 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

Begin at the Northwest corner of the S.W. 1/4 of the S.E. 1/4 of Section 25, Township 18 South, Range 2 West and run South along the West line of said 1/4-1/4 section a distance of 684.25 feet to a point; thence 90°00' to the left in an Easterly direction a distance of 266 feet, more or less, to a point on the edge of a lake; thence in a generally Southeasterly direction along the edge of the lake a distance of 1960 feet, more or less, to a point on a line lying 30 feet West of and parallel to the East line of said 1/4-1/4 section; thence in a Northerly direction along said line a distance of 113 feet, more or less, to a point; thence 90°00' to the right in an Easterly direction a distance of 30.00 feet to a point on the East line of said 1/4-1/4 section; thence 90°00' to the left in a Northerly direction along the East line of said 1/4-1/4 section a distance of 1165.03 feet to the Northeast corner of said 1/4-1/4 section; thence 87°54'49" to the left in a Westerly direction along the North line of said 1/4-1/4 section a distance of 1320.29 feet to the POINT OF BEGINNING.

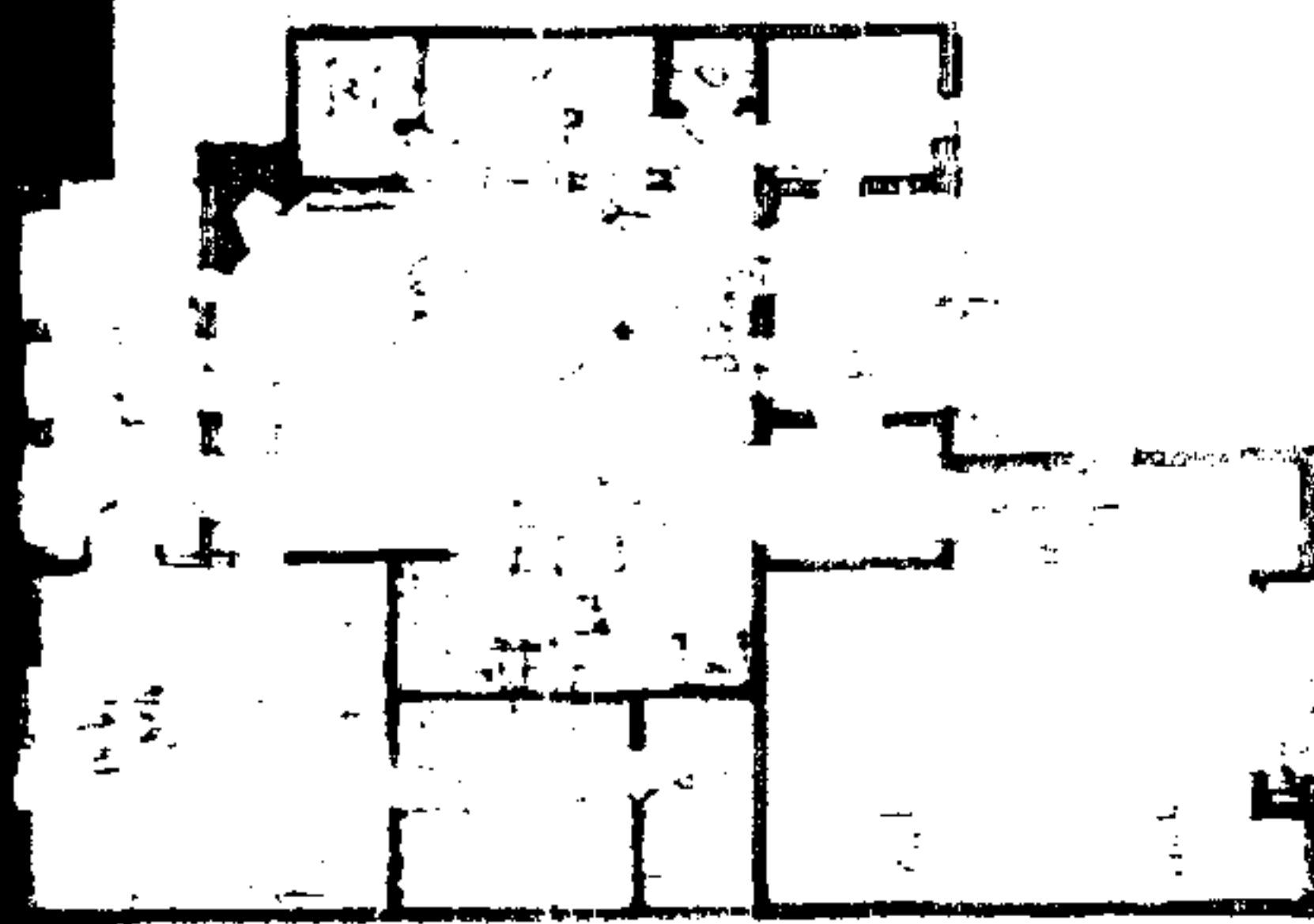
LOT 2

Lot 2, KENLEY SURVEY, as recorded in Map Book 24, Page 90, in the office of the Judge of Probate of Shelby County, Alabama, being more particularly described as follows:

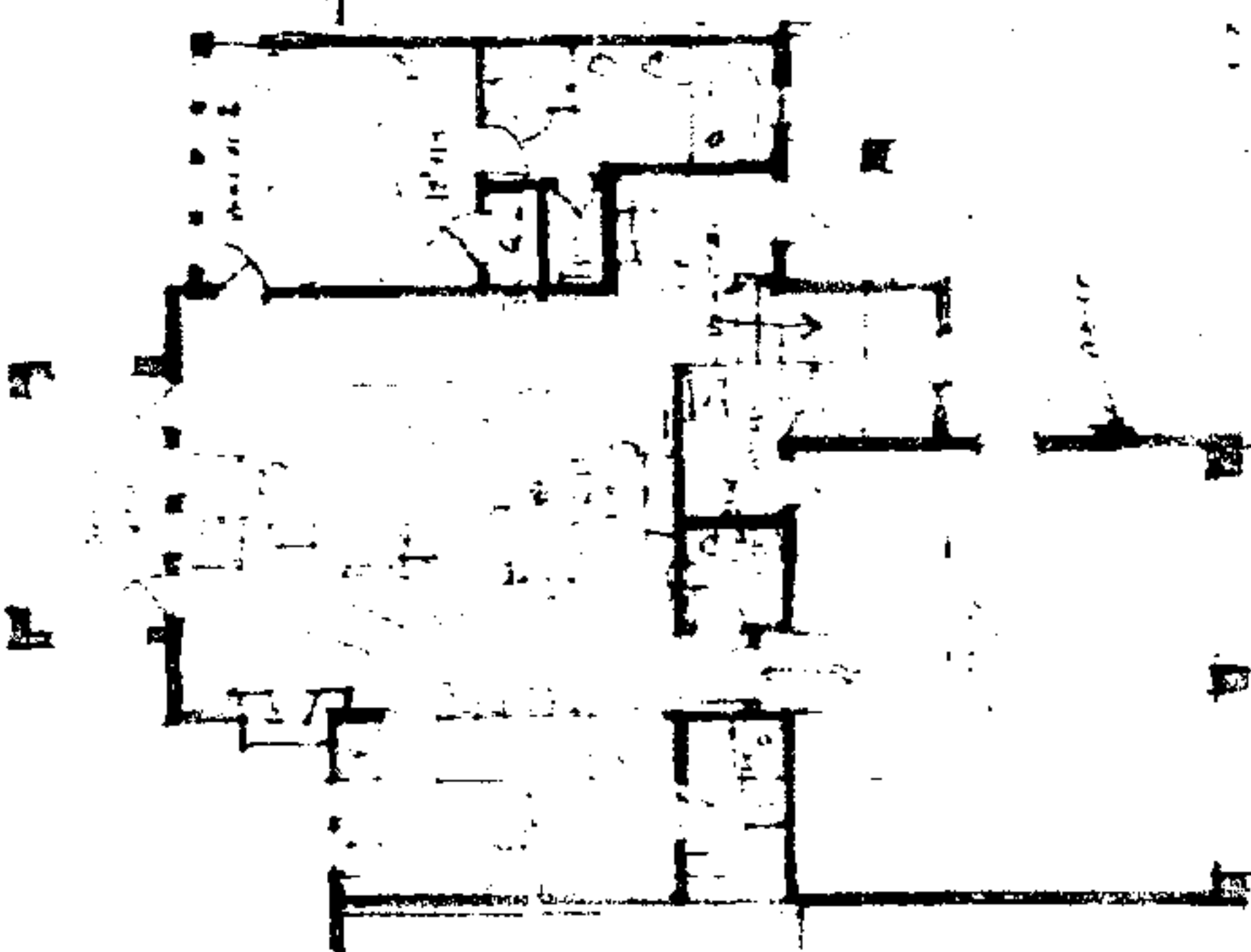
A parcel of land situated in the N.W. 1/4 of the N.E. 1/4 of Section 36, and the S.W. 1/4 of the S.E. 1/4 of Section 25, both in Township 18 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Northwest corner of the S.W. 1/4 of the S.E. 1/4 of Section 25, Township 18 South, Range 2 West and run in a Southerly direction along the West line of said 1/4-1/4 section a distance of 684.25 feet to the POINT OF BEGINNING; thence 90°00' to the left in an Easterly direction a distance of 266 feet, more or less, to a point on the edge of a lake; thence in a generally Southeasterly direction a distance of 1960 feet, more or less, to a point on a line lying 30.00 feet West of and parallel to the East line of said 1/4-1/4 section; thence in a Northerly direction along said line a distance of 113 feet, more or less, to a point; thence 90°00' to the right in an Easterly direction a distance of 30.00 feet to a point on the East line of said 1/4-1/4 section; thence 90°00' to the right in a Southerly direction along the East line of said 1/4-1/4 section a distance of 150.00 feet to the Southeast corner of said 1/4-1/4 section; thence 0°02'48" to the right in a Southerly direction a distance of 313.00 feet to a point; thence 119°46'09" to the right in a Northwesterly direction a distance of 676.92 feet to a point; thence 76°15'36" to the left in a Southwesterly direction a distance of 166.93 feet to a point; thence 68°38'40" to the right in a Northwesterly direction a distance of 157.66 feet to a point; thence 80°48" to the left in a Southwesterly direction a distance of 189 feet, more or less, to a point on the edge of a lake; thence in a generally Northwesterly direction along the edge of the lake a distance of 620 feet, more or less, to a point; thence in a Westerly direction a distance of 83 feet, more or less, to a point on the West line of the S.W. 1/4 of the S.E. 1/4 of Section 25, Township 18 South, Range 2 West; thence 90°00' to the right in a Northerly direction along the West line of said 1/4-1/4 section a distance of 463.17 feet to the POINT OF BEGINNING.

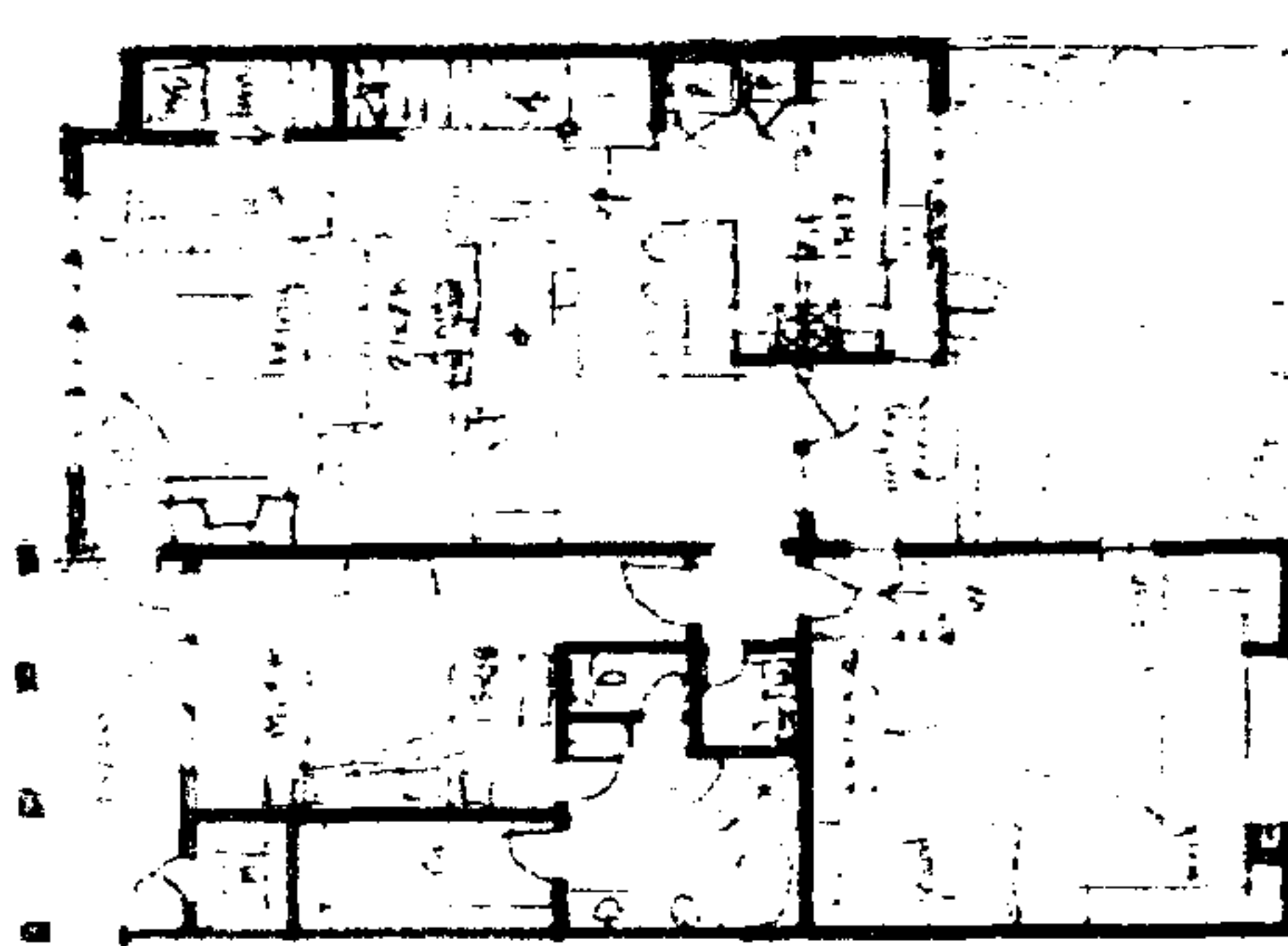




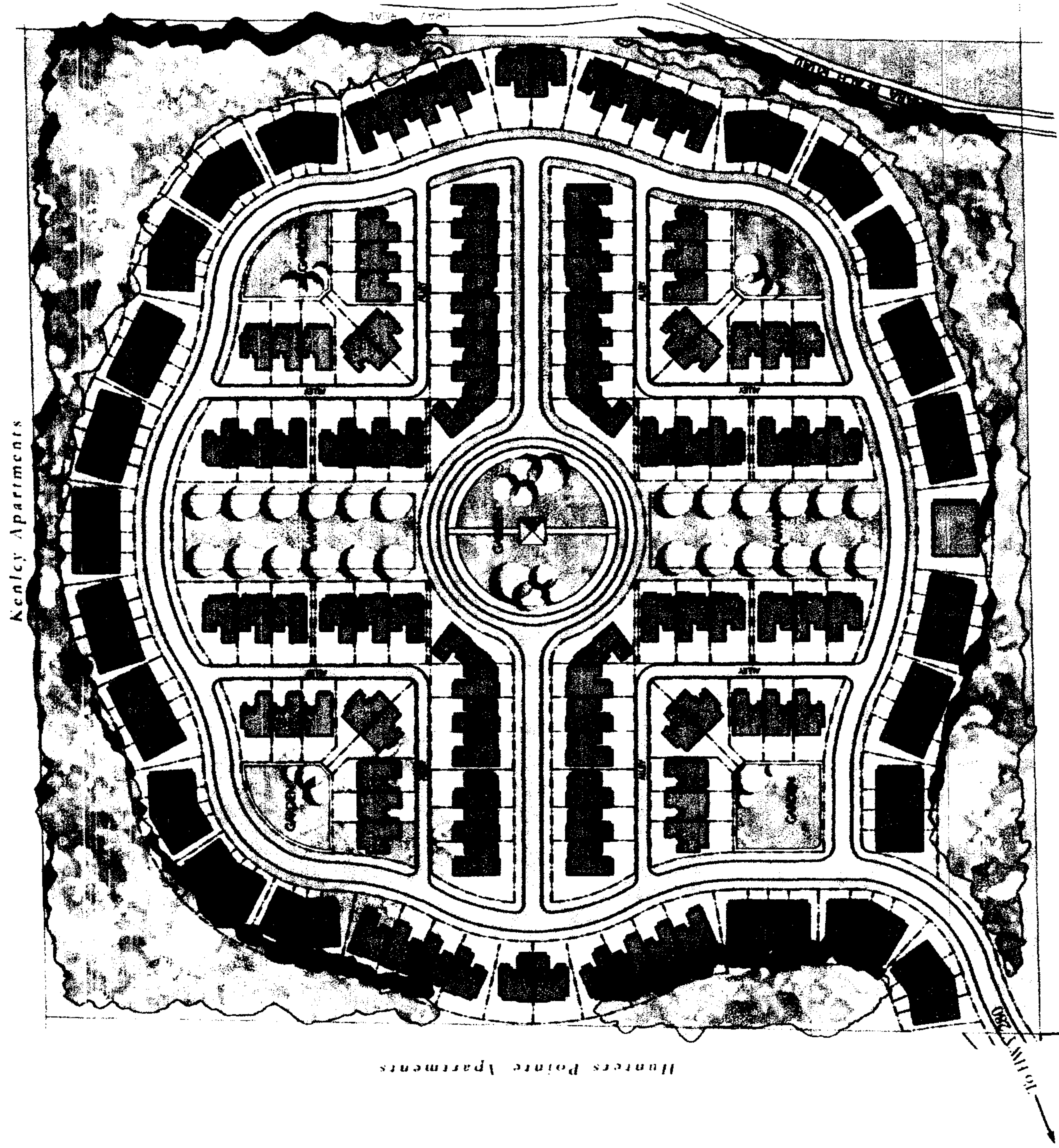
Plan A



Plan B

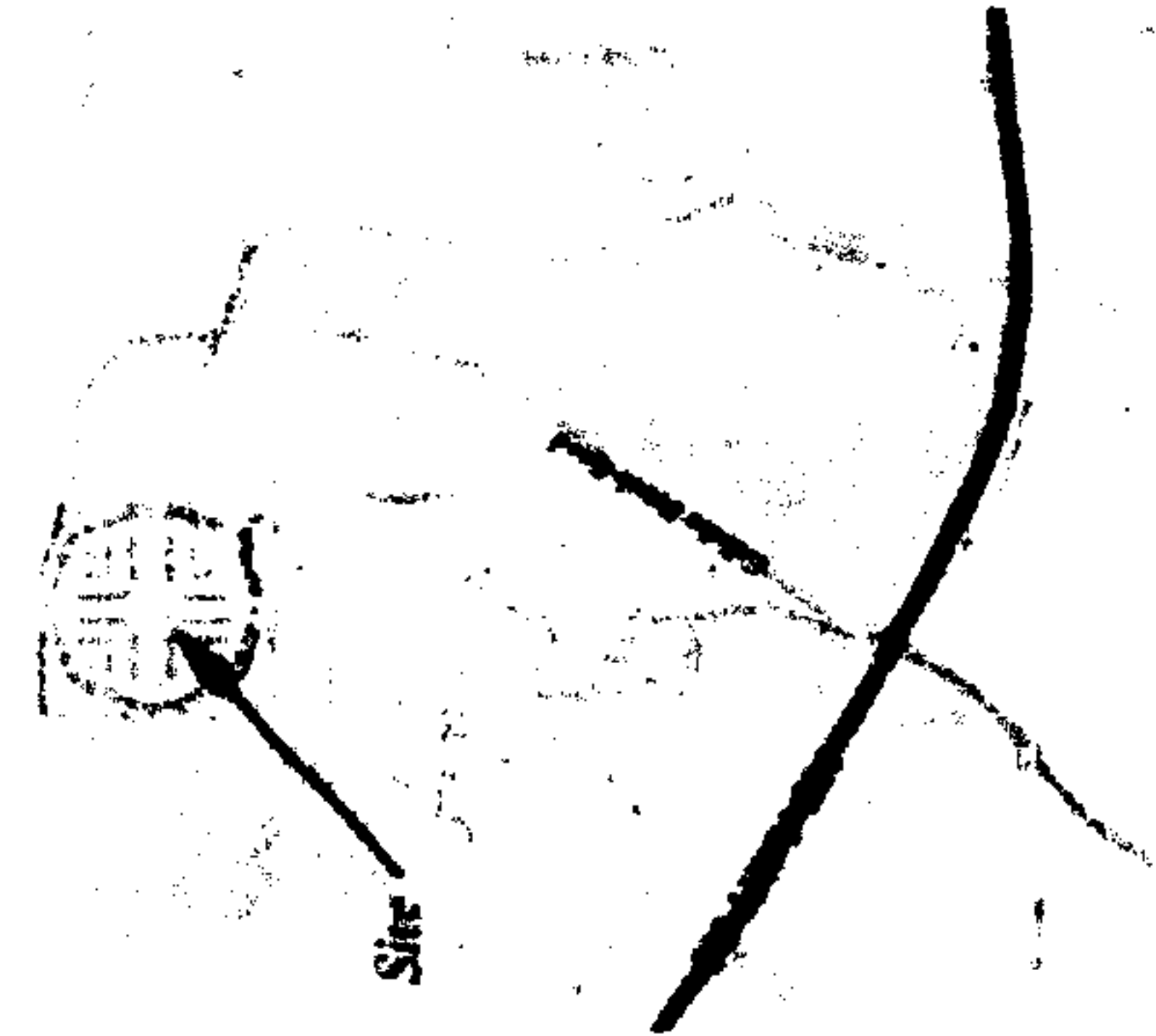


Plan C



Cahaba Beach Sire Plan

Cahaba Beach Townhouses



Vicinity Map

- 45' lot townhomes (72 lots)
- 40' lot townhomes (32 lots)
- 27' lot townhomes (88 lots)
- Common building

Legend





T/W=499.00  
B/W=499.00

KENLEY APARTMENTS

~~WATER~~ RETENTION AREA



**EXHIBIT "E"**  
**To Assignment and Conveyance**

**Proposed Water Retention Area Drainage Improvement**

The southwestern portion of the Property drains to an existing 42 inch diameter concrete pipe located on the southeastern portion of the Kenley Tract. For a distance of approximately 40 feet upstream of this pipe, there is an area which will be graded during development of the Property to provide for positive drainage. As a part of this work, rip-rap will be installed just upstream of the end of the pipe for a distance of six to eight feet. The result of this work will be that there will be no standing water upstream of this pipe except in the location of the six to eight feet of rip-rap immediately upstream from the pipe, which standing water will drain positively through the pipe to the water surface level of Lake Dixie so that it will not be standing once the source of the drainage from the Property ceases. Notwithstanding the foregoing, If reasonably required by Grantor in connection with development of the Property, Grantee will, at Grantee's expense, perform additional grading and filling in on the Property upstream of the aforesaid pipe and the aforesaid pipe will, at Grantee's expense, be cleaned out and/or replaced and/or reinstalled at a different slope to effect positive drainage into Lake Dixie such that no water will be standing upstream of the aforesaid pipe even in the rip-rap area. Grantee expressly understands and agrees that nothing contained on this Exhibit "E" limits any other rights Grantor may have for other corrective action as provided for in the Special Warranty Deed to which this Exhibit "E" is attached.